

KRAMER LEVIN NAFTALIS & FRANKEL LLP

Adam C. Rogoff, Esq.
P. Bradley O'Neill, Esq.
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
*Co-Counsel for Benefit Street Partners Realty
Operating Partnership, L.P.*

NELSON MULLINS RILEY & SCARBOROUGH, LLP

Lee B. Hart, Esq.
201 17th Street, Suite 1700
Atlanta, Georgia 30363
Telephone: (404) 322-6000
Facsimile: (404) 322-6050

Gary M. Freedman, Esq.
2 South Biscayne Blvd., 21st Floor
Miami, Florida 33131
Telephone: (305) 373-9400
Facsimile: (305) 373-9443
*Co-Counsel for Benefit Street Partners
Realty Operating Partnership, L.P.*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

96 Wythe Acquisition, LLC

Debtor.

Chapter 11

Case No. 21-22108-RDD

LENDER'S NOTICE OF FILING HIGHLIGHTED TRANSCRIPT DESIGNATIONS

Benefit Street Partners Realty Operating Partnership, L.P. ("Lender"),¹ in preparation for the evidentiary hearing scheduled for May 17, 2022 at 10:00 a.m. on *Lender's Renewed Motion for the Appointment of a Chapter 11 Trustee Based on Continuing Malfeasance* [ECF No. 476 & 477] and the Supplement thereto [ECF No. 533]

¹ Benefit Street is a wholly owned subsidiary of Franklin Resources, Inc. that, together with various subsidiaries, operates as Franklin Templeton.

(collectively, the “Lender’s Trustee Motion”) provides this notice of filing the attached roadmap containing highlighted transcript designations and video excerpt references to videotaped deposition testimony for use at the hearing to aid the Court and the parties with following Lender’s presentation of the evidence during the hearing on Lender’s Trustee Motion.²

Dated: May 16, 2022

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH, LLP

/s/ Gary M. Freedman

Gary M. Freedman
2 South Biscayne Blvd., 21st Floor
Miami, Florida 33131
Telephone: (305) 373-9400
Facsimile: (305) 373-9443
Gary.Freedman@nelsonmullins.com

Lee B. Hart
201 17th Street, Suite 1700
Atlanta, Georgia 30363
Telephone: (404) 322-6000
Facsimile: (404) 322-6050
Lee.Hart@nelsonmullins.com

and

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Adam C. Rogoff, Esq.
P. Bradley O’Neill, Esq.
1177 Avenue of the Americas
New York, New York 10036
Telephone: (212) 715-9100
Facsimile: (212) 715-8000
arogoff@kramerlevin.com
boneill@kramerlevin.com

*Co-Counsel for Benefit Street Partners
Realty Operating Partnership, L.P.*

² Please note that Lender reserves the right to vary its presentation from that reflected in his roadmap.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on
this 16th day of May, 2022:

Via e-mail upon *Co-Counsel for the Debtor and Debtor in Possession*

Douglas E. Spelfogel, Esq.
MAYER BROWN LLP
1211 Avenue of the Americas
New York, New York 10020
Telephone: (212) 506-2265
dspelfogel@mayerbrown.com

Mark A. Frankel, Esq.
BACKENROTH GRANKEL & KRINSKY, LLP
800 Third Avenue, 11th Floor
New York, NY 10022
Telephone: (212) 593-1100
mfrankel@bfklaw.com

/s/ Gary M. Freedman

Gary M. Freedman

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I. **General Background**

a. **Exhibits (None)**

b. **Testimony**

1. Transcript of the Videotaped Virtual Deposition of Michael Lichtenstein, pursuant to Rule 30(b)(6) on behalf of the Debtor and in his individual capacity, taken on March 10, 2022 (Vol. I), and continued on March 23, 2022 (Vol. II) ("Lichtenstein"):

- Lichtenstein, p. 6, l. 20 through p. 7, l. 2 (video - p. 6, l. 20 through p. 7, l. 2 only)

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1 LICHTENSTEIN

2 MR. KELLEY: Typically, for a

3 deposition, all attendees are supposed to

4 be noted on the record. So I think

5 Melissa appreciates that. I see her

6 nodding.

7 MR. HART: This is Lee Hart, with

8 Nelson Mullins, for the lender as well.

9 THE VIDEOGRAPHER: Thank you,

10 Counsel.

11 At this time, I would ask

12 Ms. Gilmore to please administer the oath

13 and we can proceed.

14 M I C H A E L L I C H T E N S T E I N,

15 called as a witness, having been duly

16 placed under oath by a Notary Public, was

17 examined and testified as follows:

18 EXAMINATION BY

19 MR. FREEDMAN:

20 Q. Please state your name.

21 A. Yechial Michael Lichtenstein.

22 Q. Can you spell your first name for

23 us?

24 A. Y-E-C-H-I-A-L.

25 Q. And do you typically go by Michael?

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LICHTENSTEIN

1
2

A. Yes.

3 Q. And what is your home address,
4 Mr. Lichtenstein?

5 A. 929 East 5 Street, Brooklyn, New
6 York.

7 Q. And do you have a business address,
8 sir?

9 A. Yes.

10 Q. What is that, please?

11 A. 679 Driggs Avenue, Brooklyn, New
12 York 11211.

13 (Reporter clarification.)

14 A. 679 Driggs, D-R-I-G-G-S, Avenue,
15 Brooklyn, New York 11211.

16 Q. And what business is located at 679
17 Driggs Avenue?

18 A. My office.

19 Q. What's the name of the business or
20 businesses that are located at that address?

21 A. My office is located there.

22 Q. I understand that, sir. Office for
23 what business or businesses?

24 A. For my office and my files.

25 MR. KELLEY: Your question, what

- Lichtenstein, p. 23, l. 10 through p. 25, l. 4 (video - p. 23, l. 10 through p. 24, l. 2 only)

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1 LICHTENSTEIN

2 Do you understand that?

3 A. Yes.

4 Q. And you understand that you are

5 giving testimony today as the same as you would

6 give testimony in bankruptcy court before Judge

7 Drain.

8 Do you understand that?

9 A. Yes.

10 Q. And do you understand that you are a

11 proponent of the debtor's plan of

12 reorganization?

13 A. Yes.

14 Q. And do you understand that you are a

15 plan sponsor of the debtor's plan of

16 reorganization?

17 A. Yes.

18 Q. And would you agree with me that

19 it's important for you to provide forthright

20 testimony in respect to matters relating to the

21 debtor and the debtor's plan of reorganization?

22 A. Yes.

23 Q. What percentage ownership do you

24 presently have of the debtor, either directly

25 or indirectly, sir?



1 LICHTENSTEIN

2 A. About 50 percent.

3 Q. You need to speak up.

4 MR. KELLEY: Michael, could you move

5 just a hair closer to your microphone?

6 Your volume -- thank you. Your volume is

7 falling down.

8 Excuse me, Gary. I'm sorry.

9 MR. FREEDMAN: Thank you. I had the

10 same concern.

11 A. I said about 50 percent.

12 Q. Are you not sure of the exact

13 ownership interest that you have in the debtor,

14 sir?

15 A. What is that beeping?

16 Q. I can't hear you, sir.

17 MR. KELLEY: For some reason your

18 microphone is having trouble picking you

19 up, Michael. If there's any way you can

20 move a tad closer to your microphone, that

21 would be helpful. Thank you.

22 A. I said about 50 percent.

23 Q. I understand, but why do you believe

24 it's about? Why can't you give me an exact

25 ownership interest that you have in the debtor?



1 LICHTENSTEIN

2 A. Because we are -- you can call it --
3 for purposes of this conversation, we'll say
4 50 percent.

5 Q. And what interest -- strike that.
6 What ownership interest will you
7 have in the debtor post confirmation?

8 A. We're still negotiating that.

9 Q. You're negotiating that with whom?

10 A. With the preferred equity provider.

11 Q. Is that Lockwood?

12 A. Yes.

13 Q. Who are the individuals that are
14 involved in that negotiation?

15 A. Toby Moskovits and myself.

16 Q. And who on the Lockwood side, sir?

17 A. The Lockwood team, Charles.

18 Q. Charles. Does Charles have a last
19 name, sir?

20 A. Charles Everhardt.

21 Q. And what is the status of those
22 negotiations?

23 A. I don't think I need to provide
24 information on my negotiations.

25 Q. Are you refusing to answer the

2. Transcript of the Videotaped Virtual Deposition of Toby Moskovits, pursuant to Rule 30(b)(6) on behalf of the Debtor and in her individual capacity, taken on March 4, 2022 (Vol. I), and continued on April 1, 2022 (Vol. II) ("Moskovits"):

- Moskovits, p. 8, l. 18 through p. 9, l. 5 (no video)

Page 8

1 TOBY MOSKOVITS

2 EXAMINATION BY

3 MR. FREEDMAN:

4

5 Q Good morning, Ms. Moskovits, I

6 am Gary Freedman.

7 As you know, I represent Benefit

8 Street Partners.

9 How are you today?

10 A I am okay, thank you.

11 Q You feel okay?

12 A I guess it depends how this

13 proceeding goes.

14 If you are going to be polite

15 and pleasant, at least a new firm has shown up

16 over here, your predecessors weren't so nice,

17 but we will see what happens; I'm optimistic.

18 Q I'll make a deal with you right

19 off the bat, if you're polite and civil, I will

20 do the same; how is that?

21 A Okay.

22 You do know that your firm fired

23 my previous lawyer, but that's another

24 conversation for another day, but I'll give you

25 the benefit of the doubt.

Page 9

TOBY MOSKOVITS

1
2 Q Well, I'm not sure why you are
3 bringing that up, but anyway, please state your
4 name for the record?

5 A Toby Moskovits.

6 Q And what is your home address,
7 Ms. Moskovits?

8 A It's 137-55 71st Avenue, and
9 that's in Flushing, in Queens, in New York.

10 Q And what is your business
11 address?

12 A It's 679 Driggs Avenue, that's
13 in Brooklyn, New York.

14 Q And what business is located at
15 679 Driggs Avenue?

16 A My company.

17 Q What company is that?

18 A It's Heritage Equity Partners.

19 Q Any other companies or
20 businesses located at that address that you are
21 affiliated with?

22 A I am a real estate developer, so
23 it's a mailing address used for various
24 entities.

25 Q Where are you physically located

- Moskovits, p. 32, ll. 9-15 (video)

Page 32

1 TOBY MOSKOVITS

2 A Yes, I understand that to be the

3 case.

4 Q And you understand that you are

5 here to provide testimony on behalf of or with

6 respect to issues relating to the Debtor and

7 the Debtor's planning, correct?

8 A Yes.

9 Q And you individually indirectly

10 are a 50 percent owner of the Debtor, correct?

11 A Yes.

12 Q And Mr. Lichtenstein is the

13 other 50 percent holder or owner of the Debtor,

14 correct?

15 A Yes.

16 MR. FREEDMAN: Let us show what

17 we are marking as Exhibit number 2.

18 This is the organization chart that was

19 provided to us.

20 Q Do you recognize this?

21 (The above described document was

22 marked Exhibit 2 for identification as of

23 this date.)

24 A This is the organization -- as

25 you present it, I believe this is the

3. Transcript of the Videotaped Virtual Deposition of David Goldwasser, pursuant to Rule 30(b)(6) on behalf of the Debtor and in his individual capacity, taken on March 15, 2022 ("Goldwasser"):

- Goldwasser, p. 7, ll. 10-13 (video)

Page 7

1 DAVID GOLDWASSER
2 called as a witness, having first duly
3 affirmed before the Notary Public, under
4 penalty of perjury, and was examined and
5 testified as follows:
6
7 EXAMINATION BY
8 MR. FREEDMAN:
9
10 Q Please state your name and your
11 home address.
12 A David Goldwasser, 7028 Valencia
13 Drive, Boca Raton, Florida, 33433.
14 Q And do you have a business
15 address, Mr. Goldwasser?
16 A I do have a business address in
17 Hollywood, Florida, I do not know it off the
18 top of my head.
19 Q Do you know what street it's on?
20 A It's on a side street, I think
21 it's 34th Court or something. I could look it
22 up if you would like, but I don't know it off
23 the top of my head.
24 Q Where are you physically located
25 right now?

- Goldwasser, p. 40, l. 11 through p. 41, l. 19 (video)

Page 40

1 DAVID GOLDWASSER

2 '19.

3 Q Are there documents reflecting

4 that relinquishment of that interest?

5 A I believe so, sir, yes.

6 Q And were documents filed in the

7 corporate records of that entity reflecting

8 your relinquishment of interest?

9 A I believe so.

10 MS. PARLOVECCHIO: Objection.

11 Q How did you get involved in this

12 case?

13 A How did I get involved in this

14 case?

15 Q Yes, sir.

16 A I was asked by Mr. Moskovits --

17 Mrs. Moskovits Moskovits and Mr. Lichtenstein

18 to work with them on the filing and come in as

19 a CRO to help them navigate this.

20 Q And in that regard, what have

21 been your responsibilities?

22 A We helped, myself and the people

23 in my office helped get all of the information

24 together, working with legal counsel, at that

25 time it was Backenroth Frankel & Krinsky,

Page 41

1 DAVID GOLDWASSER

2 solely, who filed the case.

3 Making sure we assembled all of
4 the information for the schedules, coordinating
5 to get them -- obviously it's a large amount of
6 information for an operating entity such as
7 this.

8 And worked with counsel to put
9 together, assisted in helping putting the
10 petition together.

11 Working on the 341 meetings,
12 working on communications with the creditors to
13 try to have a semblance of order, attending all
14 of the court hearings, reviewing all of the
15 filings.

16 Working on plan proposals and,
17 you know, working through some of the
18 litigation or proposed litigation items
19 throughout the case.

20 Q Who did you interface with --

21 MR. FREEDMAN: Strike that.

22 Q You said there were others in
23 your office that were involved in this process.
24 Who were those people?

25 A I have two people in my office,

- Goldwasser, p. 43, l. 12 through p. 45, l. 20 (video - p. 44, l. 24 through p. 45, l. 20 only)

Page 43

1 DAVID GOLDWASSER

2 A Through a different -- I'm not

3 sure which entity each of them gets a check

4 from.

5 But they work -- they are under

6 my direction.

7 Q Where are they physically

8 located?

9 A Mr. Taub is in the Hollywood

10 address, and Ms. Chikasheva works out of her

11 apartment in New York City.

12 Q And tell me about the effort to

13 compile the information and documents for the

14 bankruptcy filing and schedules, explain what

15 was undertaken and who you interfaced with.

16 MS. PARLOVECCHIO: Objection.

17 A You know, we have a list when we

18 enter into any potential preparation for a

19 bankruptcy, we send out the list to whoever is

20 designated on the team of the ownership and/or

21 management.

22 I don't have an e-mail in front

23 of me to tell you who was on that list, but we

24 send out the list, we copy the attorneys, we

25 copy the people on our team, we copy all of the

Page 44

DAVID GOLDWASSER

parties on the other side, and we create a general, I would assume here, but we generally create a checklist as the stuff comes in.

We organize the folders and we make sure that counsel who is preparing for the filing has access to all of the folders.

So that, you know, and the information so that they can properly prepare the filings and make sure that things are not missing.

When things are missing, generally Elena from my office follows up with the appropriate parties.

In some cases there are many people, in some cases there are a few.

In this case I think there were a few different people and then follows up to make sure we have everything that we can get.

And then continues to follow up on the things that are missing and/or needed, get found along the way, and then need to be amended.

Q And who on the Debtor's side did you and your team interface with in respect to

DAVID GOLDWASSER

this task?

A Like I just said earlier, I don't have an e-mail in front of me giving the list.

I believe definitely Ms. Moskovits, Mr. Lichtenstein, Ms. Gross, I believe, I'm not sure if Jeremy Rauch was original, the original e-mail. He definitely was involved at some point.

And there is I think another one person from my team whose name is escaping me at the moment.

Q Would that be Mr. Kirschner?

A Yes, Mark Kirschner, correct.

I think those were the main people. There might have been others, but I think those are the main three people that we generally have dealt with in regards to the information flow.

Q Who is Ms. Gross?

A Miriam or Marian Gross.

Q Who is she?

A I'm sorry?

Q Who is she?

- Goldwasser, p. 52, l. 14 through p. 53, l. 20 (video - p. 52, l. 14 through p. 52, l. 19 and p. 53, l. 1 through p. 53, l. 20 only)

Page 52

1 DAVID GOLDWASSER

2 application for fees.

3 Q So, have you been paid?

4 A I have not been paid.

5 The lender has not allowed me to

6 get paid.

7 Q Has the payment obligation been

8 guaranteed by any third party?

9 A It has not.

10 Q Has any third party verbally

11 guaranteed the payment obligation to you as

12 CRO?

13 A Sadly for me, no.

14 Q So, you helped prepare and sign

15 the Chapter 11 Petition, sir?

16 A Yes.

17 Q And you helped prepare and you

18 signed the bankruptcy schedules?

19 A I did, sir.

20 Q And you did that after you went

21 through the process that you described a couple


22 of moments ago about preparing a checklist and

23 having documents pulled and reviewed by you

24 prior to that, is that fair?

25 A That is fair, sir, yes.

DAVID GOLDWASSER

1 
2 Q And you were satisfied with the
3 responsiveness of the Debtor in providing you
4 the information that was requested and on that
5 checklist?

6 A I believe so. I mean, in every
7 case there is always some frustrating stuff
8 that happens, and nothing is perfect.

9 For the most part, I believe we
10 had a pretty fluid process.

11 Q Do you remember or recall any
12 frustrations that you experienced in this case
13 in that regard?

14 A I don't think so. I think this
15 specific case had pretty much everything
16 available. We did have to amend schedules a
17 couple of times, but that's not uncommon for
18 any case.

19 I mean, in a case with moving
20 parts, I apologize.

21 Q As CRO, did you have
22 considerable authority over the Debtor's
23 postpetition operations?

24 A Authority, I wouldn't say I had
25 authority.

- Goldwasser, p. 74, l. 19 through p. 75, l. 9 (no video)

Page 74

1 DAVID GOLDWASSER

2 then what I asked or didn't ask at that point
3 in time.

4 But it's a very good point that
5 it's not on here, and it should have been here.

6 Q And the bankruptcy schedules
7 have never been amended to include the
8 management agreement, correct?

9 A I think that's been a bone of
10 contention between the lender and the Debtor
11 and the management company for a period of
12 time, of which they are claiming that's not a
13 valid management agreement, and there has been
14 a dispute over this agreement.

15 Q Do you still have my question in
16 mind, which was simply --

17 A I don't believe that we amended
18 it, that's correct.

19 Q And who designated you as the
20 representative of the Debtor to appear on its
21 behalf at the meeting of creditors on March 18,
22 2021?

23 A Who designated -- I think in the
24 original resolution that was filed that was
25 signed by Mr. Lichtenstein and Ms. Moskovits,

Page 75



1 DAVID GOLDWASSER

2 they designated me to act on their behalf in
3 the capacity of CRO, which I have appeared at
4 many 341 meetings for this capacity.

5 I don't -- it's been a general
6 practice that I go to the 341 meetings. As of
7 late, we have been changing that, but that's a
8 general practice, especially in a larger case
9 where there is a lot of moving parts.

10 Q Going back to Exhibit 3, the
11 bankruptcy schedules.

12 A Yes, sir.

13 Q If you look at, let's start on
14 page 24 of 33.

15 A Okay.

16 Q Let me know when you are there.

17 A I'm not used to this system,
18 hold on.

19 Yes, sir.

20 Q If you look at the bottom of
21 page item 4.

22 A Um-hum.

23 Q Payments or other transfers of
24 property made within one year before filing
25 this case that benefited any insider.

4. Transcript of the Videotaped Virtual Deposition of Michael Lichtenstein, pursuant to Rule 30(b)(6) on behalf of The Williamsburg Hotel BK LLC and in his individual capacity, taken on March 29, 2022 ("Lichtenstein MC"):

- Lichtenstein MC, p. 8, ll. 20-23 (video)

Page 8

1 MICHAEL LICHTENSTEIN

2 fully understand, thank you for

3 clarifying.

4 MR. ROGOFF: Thank you.

5 MR. FREEDMAN: Can I proceed now,

6 Charles?

7 MR. KELLEY: Sure, Gary. I

8 apologize for interrupting.

9 Q I know time is valuable, so good

10 morning, Mr. Lichtenstein. How are you today?

11 A I am good.

12 Q So, this is the third time we

13 have met for a deposition. Do you remember the

14 rules of the road?

15 A Yes.

16 Q Good.

17 So, by the way, where are you

18 physically located today?

19 A In the hotel.

20 Q And I should ask you to state

21 your name and your home address for the record.

22 A Michael Lichtenstein, 929 East

23 5th Street, Brooklyn, New York 11230.

24 Q And where in the hotel are you

25 physically located?

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- Lichtenstein MC, p. 10, ll. 20-24 (video)

Page 10

1 MICHAEL LICHTENSTEIN

2 record while he does that. I don't want

3 to use up valuable time while the

4 witness tries to navigate the exhibit on

5 the record.

6 (Discussion off the record.)

7 THE WITNESS: I see it. I've got

8 it.

9 MR. FREEDMAN: Let's go back on

10 the record, then.

11 THE WITNESS: Are we back on the

12 record?

13 Q So you have Exhibit 1, sir?

14 A Yes.

15 Q Do you recognize this as the

16 notice of today's deposition?

17 A Okay.

18 Q Is that a yes?

19 A That's a yes.

20 Q And you understand that you're

21 being deposed today in your individual capacity

22 and as the corporate representative of the

23 Williamsburg Hotel BK LLC, correct?

24 A Yes.

25 Q And you've been designated by

- Lichtenstein MC, p. 13, l. 19 through p. 14, l. 14 (video)

Page 13

1 MICHAEL LICHTENSTEIN
2 talking about a lot of companies that
3 are not under subpoena today.
4 MR. FREEDMAN: Okay. First of
5 all, Mr. Glucksman, I'm going to ask you
6 to comply with the appropriate rules,
7 which requires you to object to form,
8 not make narrative objections.
9 When you object to form, if I have
10 an issue and I want to challenge your
11 objection, I will do so.
12 But I have a limited amount of time
13 and I'm not going to get into narrative
14 debates with you.
15 So I would ask that you confine
16 yourself and comply with the appropriate
17 rules.
18 Thank you.
19 Q My question was going to be, is
20 now, what is your position with the management
21 company, Mr. Lichtenstein?
22 A I am the owner.
23 Q Along with Ms. Moskovits,
24 correct?
25 A Yes.



1 MICHAEL LICHTENSTEIN

2 Q And what is your ownership
3 interest in the management company?

4 A I don't remember, I don't
5 remember now, I think it's 50 percent.

6 Q And Ms. Moskovits would be the
7 other 50 percent owner?

8 A I think so. I don't remember
9 now the details.

10 Q Who else would be an owner of
11 the management company, other than Ms.
12 Moskovits and yourself?

13 A I think it's the two of us right
14 now.

15 You are asking overly broad
16 questions, so let me be clear, when I said
17 before that I don't remember about any
18 agreements between the management company and
19 any of the numerous companies that you threw
20 out at me, I am not saying that there is no
21 agreement between the management company and
22 any of those companies, that was done in the
23 last six years, I'm saying I don't remember
24 now.

25 And when you ask me about

- Lichtenstein MC, p. 15, ll. 6-9 (video)

Page 15

1 MICHAEL LICHTENSTEIN

2 partnership, ownership of the management

3 company, I remember it being me and Toby, it

4 could be that Toby is more than me, I don't

5 remember the exact percentages.

6 Q And as I understand it, neither

7 you nor Ms. Moskovits have ever been an

8 employee of the management company, correct?

9 A I don't remember now.

10 Q Are you presently an employee of

11 the management company, sir?

12 A I am not getting a paycheck from

13 the management company now.

14 Q Well, I didn't ask you whether

15 or not you are getting a paycheck, are.

16 You presently an employee of the

17 management company?

18 A The answer is I am not getting a

19 paycheck now from the management company.

20 Q I want an answer to my question,

21 please, if you could.

22 Are you an employee of the

23 management company?

24 A I do not remember now if I was

25 an employee during the last seven, eight years

- Lichtenstein MC, p. 17, ll. 12-20 (video)

Page 17

1 MICHAEL LICHTENSTEIN

2 30(b)(6) capacity.

3 I will take the lead on presenting,

4 but Mr. Glucksman may have particular

5 objections he may want to interpose.

6 I will be lead presenter of the

7 witness, but he's entitled to make his

8 record.

9 MR. GLUCKSMAN: That's right.

10 MR. FREEDMAN: I'm going to

11 object to that, but we will proceed.

12 Q What are your specific

13 responsibilities as an owner of the management

14 company?

15 In other words, what are your

16 duties and responsibilities?

17 A I'm not going to respond as to

18 duties. My actions, what I do is I manage the

19 Williamsburg Hotel, and I manage whatever other

20 hotels the management company was working on.

21 Q What other hotels has the

22 management company been working on?

23 A The hotel -- the management has

24 been working on the Williamsburg Hotel in

25 Bushwick, and the management company has been

- Lichtenstein MC, p. 18, l. 3 through p. 20, l. 11 (no video)

Page 18

1 MICHAEL LICHTENSTEIN

2 working on a hotel in Miami.

3 Q What is the name of the

4 development company in respect to the Bushwick

5 hotel?

6 A Excuse me?

7 Q What is the name of the

8 development company in respect to the Bushwick

9 hotel project?

10 A I'm not understanding your

11 question. What is the name of who?

12 Q The development company, who is

13 developing the Bushwick hotel?

14 A I don't remember the exact name,

15 it's 233 Siegel Acquisition LLC, if I remember

16 correctly.

17 Q And 233 -- that property was

18 just recently sold out of bankruptcy, right?

19 A That property was just sold to

20 the original buyer, who was lining up to buy it

21 prior to COVID.

22 Q Out of bankruptcy, correct?

23 A Through bankruptcy

24 reorganization; yes.

25 Q Did 232 Siegel ever have a

1 MICHAEL LICHTENSTEIN

2 working on a hotel in Miami.

3 Q What is the name of the
4 development company in respect to the Bushwick
5 hotel?

6 A Excuse me?

7 Q What is the name of the
8 development company in respect to the Bushwick
9 hotel project?

10 A I'm not understanding your
11 question. What is the name of who?

12 Q The development company, who is
13 developing the Bushwick hotel?

14 A I don't remember the exact name,
15 it's 233 Siegel Acquisition LLC, if I remember
16 correctly.

17 Q And 233 -- that property was
18 just recently sold out of bankruptcy, right?

19 A That property was just sold to
20 the original buyer, who was lining up to buy it
21 prior to COVID.

22 Q Out of bankruptcy, correct?

23 A Through bankruptcy
24 reorganization; yes.

25 Q Did 232 Siegel ever have a

1

MICHAEL LICHTENSTEIN

2

contract or agreement with the management

3

company?

4

A Very possible.

5

Q Do you recall it as you sit here

6

today?

7

A I said it's very possible.

8

Q That's not my question.

9

Do you recall there being a

10

contract or agreement between 232 Siegel and

11

the management company as you sit here today?

12

A There was definitely discussion

13

about it, and in various formats, both with if

14

we were going to build it, and both if someone

15

else was going to build it.

16

And I would have to check my

17

records.

18

Q And what's the name of the

19

development company that's doing the Miami

20

project?

21

A The development company, I don't

22

remember the name now.

23

Q You have no idea?

24

A No, I said I don't remember the

25

name of the development company right now.

1 MICHAEL LICHTENSTEIN

2 Q Is there a written contract or
3 agreement between that company and the
4 management company?

5 A I have to check my records.

6 Q Do you have a recollection as
7 you sit here today of there being one?

8 A There might very well have been
9 one. I have to check my records over the past
10 four years to see if there was ever executed or
11 signed.

12 MR. GLUCKSMAN: You have asked
13 him. Objection, you've asked him again
14 and again to speculate.

15 MR. FREEDMAN: Counsel, object to
16 form. I'm not going to do this with
17 you.

18 I'll bring this before the judge
19 and I will seek sanctions if you keep it
20 up.

21 Do you understand me, sir?

22 MR. GLUCKSMAN: I heard your
23 words, yes.

24 MR. FREEDMAN: Good, thank you.

25 Q The management company did not

II. Debtor's Lack of Transparency and Discovery Obstruction

a. Exhibits (None)

b. Testimony

1. Lichtenstein

- Lichtenstein, p. 42, ll. 16-25 (video)

Page 42

1 LICHTENSTEIN

2 \$10 million of loans to the debtor to assist

3 with operations, to assist with shortfalls, to

4 assist with completion of construction and any

5 and all necessary costs, of which we got paid

6 back less than 50 percent and we are still owed

7 about \$6 million.

8 Q. Who is "we"?

9 A. Toby Moskovits and myself.

10 Q. Of the approximately \$10 million,

11 how much of that amount did you fund?

12 A. Did you finish the question?

13 Q. Yes, sir.

14 (Reporter clarification.)

15 A. Both of us funded the loan.

16 Q. What was the source of funds for the

17 loan?

18 A. I don't think it's any of your

19 business.

20 Q. You're refusing to answer the

21 question, sir?

22 A. I am not responding as to the

23 sources of where the \$10 million loan came

24 from. It is simply not a matter for your

25 deposition.

- Lichtenstein, p. 239, l. 20 through p. 241, l. 13 (video - p. 240, ll. 10-14 only)

Page 239

1 M. LICHTENSTEIN

2 A. I don't know which line you're reading

3 from.

4 Q. It's 1A.

5 A. Okay.

6 Q. Do you agree with me it shows zero

7 receipts there?

8 A. Seems to show zero, yes.

9 Q. So is it your testimony that the debtor

10 had zero receipts in 2017?

11 A. No. It is my testimony that the tax

12 return is prepared in the way the -- the way a tax

13 return is done, and this is what it shows here in

14 this line item.

15 Q. I don't know what that means.

16 If an entity has receipts, it's

17 supposed to be reflected on the return, no?

18 A. Yes, and everything is reflected on this

19 return. You're asking me about one line item.

20 Q. Right. And if you look at -- just look

21 at the income section, 1 through 8. The only income

22 or receipts reflected on this 2017 return is

23 \$180,000, correct?

24 A. Yes.

25 Q. Okay. So that was the total amount of

Page 240

M. LICHTENSTEIN

1 receipt or income that the debtor had in 2017,
2 correct?

3 A. No. I think you don't know how to read a
4 tax return.

5 Q. Well, teach me, then. Where is the
6 reflection of --

7 A. I don't think this deposition is a lesson
8 on how to read tax returns.

9 Q. Show me, sir, where on this return it
10 reflects that the debtor had other income or
11 receipts in 2017 other than the \$180,000.

12 A. I'm not going to spend time now teaching
13 you how to read tax returns.

14 Q. You're refusing to answer the question?

15 MR. KELLEY: He's asking you to flip
16 through the document and direct him where you
17 need to direct him, if you would.

18 A. You can look at Schedule L. You can look
19 at any other pages other than the first page.

20 Q. Take me to those pages that you think
21 reflect income or receipt of funds for the debtor in
22 2017 other than the first page where it reflects
23 only \$180,000.

24 A. The tax return consists of about 20
25

Page 241

M. LICHTENSTEIN

1
2

pages, so feel free to flip through it and go
through it.

4

Q. I did, sir. I couldn't find anything
else. That's why I'm asking you.

6

A. Okay. So maybe you should ask an
accountant to review with you the tax return.

8

Q. I have, and their conclusion was no
different than mine.

10

A. Okay.

11

Q. So as a debtor's representative --

12

A. You can have your tax expert reach out to
my accountant to review.

14

Q. Are you refusing to answer the question,
sir? This is a problem. You are here as the
debtor's representative. This is a very important
issue with respect to confirmation.

18

If you don't want to engage in these
very direct questions, that's your prerogative;
we'll deal with it at the appropriate time. I
just want to give you fair warning that we will be
dealing with this and we will be opposing
confirmation because of your reluctance and
failure to answer very straightforward questions
which relate to income and reporting of income by

- Lichtenstein, p. 155, ll. 4-8 (no video)

Page 155

1

M. LICHTENSTEIN

2

we didn't provide this \$10 million to the debtor

3
4

when the bank statements all show this money

5

actually coming in? I mean, that is what Mr.

6

Huebscher is lying about in his reports. And I

7

understand that probably you or one of your

8

colleagues probably drafted the report for Mr.

9

Huebscher, but --

10

MR. KELLEY: Mr. Lichtenstein, just --

11

A. -- the facts -- I'm finishing a response.

12

The facts are that these \$10 million were provided

13

to the debtor. There are bank statements that come

14

from JPMorgan and Bank of America. There are

15

numerous bank statements. They're there, so I don't

16

know what you guys are trying to do with this line

17

of questioning and disputing this stuff that is

18

actual facts.

19

MR. FREEDMAN: Move to strike as

20

unresponsive.

21

Q. My question -- well, let me ask a

22

different question.

23

When you were telling Mr. Huebscher

24

about these loans between you and and Ms.

25

Moskovits and the debtor, did you provide him a

copy of Exhibits 3 and 4?

- Lichtenstein, p. 159, ll. 11-23 (no video)

Page 159

1 M. LICHTENSTEIN

2 Judge Drain?

3 A. Well, he's generally made it a practice

4 to lie.

5 (Reporter clarification.)

6 MR. KELLEY: For some reason, your

7 voice is not coming through your microphone

8 very clear, Mr. Lichtenstein.

9 A. Can you hear me now?

10 MR. KELLEY: Yes.

11 A. I said Mr. Huebscher has made it a

12 practice to lie and just say whatever Benefit Street

13 wants or needs him to say, so I wouldn't give

14 credence to anything that he says.

15 Q. If he testified under oath that the

16 debtor never provided him or you and Ms. Moskovits

17 never provided him copies of Exhibits 3 and 4, would

18 he be lying to Judge Drain?

19 A. We provided Mr. Huebscher a 500-page

20 detailed report. He has all the bank statements

21 showing the money coming in. So whether we provided

22 him the specific exhibits that you're referring to,

23 it doesn't matter. He's still a liar.

24 MR. FREEDMAN: And I don't like to make

25 narrative speeches on the record, but we are

- Lichtenstein, p. 242, l. 13-19 (video)

Page 242

1 M. LICHTENSTEIN

2 the debtor.

3 MR. KELLEY: I'm going to object to the
4 sidebar.

5 But, Mr. Lichtenstein, how are you
6 feeling? Are you tired? Do you need to take
7 a break? Or do you want to proceed with
8 answering this question? How would you
9 like --

10 THE WITNESS: We can take a break if
11 the parties want.

12 MR. KELLEY: I'm fine. It's up to you.

13 THE WITNESS: I am merely saying that I
14 will not spend the next half hour reviewing a
15 tax return with Mr. Freedman. That is not
16 the purpose of this deposition.

17 A. If you want tax advice, then go and ask
18 some -- an accountant, and we can have conversations
19 with accountants by the tax returns.

20 MR. KELLEY: Mr. Lichtenstein, let's --
21 I'm just going to do this once on the record
22 and then we can take a break and talk about
23 it.

24 It's Mr. Freedman's time. He can waste
25 it any way he wants. If he wants to ask you

- Lichtenstein, p. 245, l. 18-19 (no video)

Page 245

1 M. LICHTENSTEIN

2 A. Yes.

3 Q. And at the end of year, the loan from

4 partners is \$4,482,723?

5 A. Yes.

6 Q. And when we looked at it earlier, we saw

7 the line of credit agreement was dated June of 2016.

8 So did you and Ms. Moskovits not have

9 any outstanding loans to the debtor going into

10 2017?

11 A. Who says we didn't? I don't understand

12 your question. How does this 2017 return show that

13 there were no loans before?

14 Q. Because they would be fronted -- if there

15 were outstanding loans as of January 1, 2017, they

16 would be reflected as beginning of the year loans.

17 That's how.

18 A. I will not respond to how tax returns

19 were prepared without my accountant.

20 (Whereupon, a 2018 Tax Return was

21 marked as Lichtenstein Exhibit 14 for

22 identification, as of this date.)

23 MR. FREEDMAN: By the way, Mr. Kelley,

24 I've tried to be cordial and professional

25 with you. When you call my questioning a

- Lichtenstein, p. 248, ll. 17-24 (no video)

Page 248

1 M. LICHTENSTEIN

2 there was no income.

3 Q. I never used the word "income," sir. I

4 said the return shows no gross receipts or sales,

5 correct?

6 A. That line is empty. That's all it says.

7 Doesn't say the hotel didn't have gross receipts or

8 sales.

9 Q. It doesn't reflect a number in there,

10 right?

11 A. So the incomes and sales are reflected in

12 other places in the tax return.

13 Q. Sir, 1A doesn't have a number in it,

14 right?

15 A. 1A doesn't have a number in it. That's a

16 fact.

17 Q. And the only income reflected on this tax

18 return is \$1,450,000 on line 7, correct? Other

19 income.

20 A. I will not answer to that question.

21 Q. What is that other income from?

22 A. As I said, I will not be having a

23 discussion with you about tax returns and how they

24 were prepared.

25 THE WITNESS: I have to wash my hands.

- Lichtenstein, p. 253, l. 25 through p. 254, l. 8 (no video)

Page 253

1 M. LICHTENSTEIN

2 Q. Line item 19A, correct?

3 A. Yes.

4 Q. The next actual entry below that is

5 Partners' capital accounts, line item 21.

6 Do you see that?

7 A. Uh-huh.

8 Q. Is that a yes, sir?

9 A. That's a yes.

10 Q. And the capital account went down from

11 twenty-one thousand, two hundred and seventy-four

12 thousand, three hundred thirty-six dollars to

13 \$11,409,750.

14 Do you see that?

15 MR. KELLEY: I think you may have

16 misspoke. You said 21,000 when you meant 21

17 million.

18 MR. FREEDMAN: Thanks. When I said it,

19 it actually dawned on me that's the way it

20 came out, so let me try again.

21 Q. \$21,274,336. And it went down to, at the

22 end of 2018, \$11,459,750.

23 Do you see that?

24 A. Yes.

25 Q. How did the partners' capital accounts

1 M. LICHTENSTEIN

2 drop over \$10 million from the beginning of 2018 to
3 the end of 2018?

4 A. So as I said, I will not be responding on
5 behalf of my accountant in detail. But overall, it
6 could have been simply depreciation or other
7 accounting reasons or mechanisms why the capital
8 account is shown as going down by this much.

9 Q. Did any of that capital account get
10 rolled into the loans? In other words, did any of
11 that capital account get recharacterized to a loan
12 during 2018?

13 A. No.

14 Q. You're sure of that?

15 A. Yes, I'm sure.

16 Q. And your only explanation, as you sit
17 here today, for the reduction of the capital account
18 is perhaps depreciation, correct?

19 A. I said that there might be a myriad of
20 explanations for how the tax returns are structured,
21 one of them which might be depreciation and other
22 explanations.

23 I will not be responding on behalf of
24 my -- of the accountant, as I said already.

25 Q. Would you flip to the last page.

- Lichtenstein, p. 255, l. 16 through p. 256, l. 2 (no video)

Page 255

1 M. LICHTENSTEIN

2 MR. KELLEY: Page 17 of 17? Sorry.

3 Just to make sure we're clear.

4 MR. FREEDMAN: 8187 Bates stamp.

5 MR. KELLEY: Thank you.

6 A. Okay.

7 Q. You'll see in the middle description

8 Property Fee from the Williamsburg Hotel BK, LLC, of

9 \$1,450,000.

10 What is that, sir?

11 (Technical interruption.)

12 Q. Williamsburg BK, LLC.

13 What is that, sir?

14 A. That is the income that was left after

15 expenses that came from the management company.

16 Q. Why does the description called -- calls

17 it a property fee?

18 A. You can ask the accountant if you want.

19 If Benefit Street insists, they can rename it to a

20 different name.

21 Q. Do you know, sir?

22 A. It's just a random description. Just a

23 random description.

24 Q. To the IRS.

25 A. As I said, if Benefit Street, the lender,

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M. LICHTENSTEIN

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2

insists, we can name it a different way.

3

(Whereupon, the 2019 Tax Return was

4

marked as Lichtenstein Exhibit 15 for

5

identification, as of this date.)

6

Q. Exhibit 15 is the 2019 return for the

7

debtor. Let me know when you have it up, please.

8

A. Yup, I have it.

9

Q. This starts with Bates stamp 3199. Is

10

that a true copy of the debtor's 2019 return?

11

A. Seems like it.

12

Q. Okay. And you see the first page? This

13

is actually Acknowledgment and General Information

14

for Entities That File Returns Electronically, and

15

it has a return number.

16

Do you see that, sir?

17

A. Yes.

18

Q. Do you have a document like that for the

19

2018 return?

20

A. Well, we just looked at it together. I

21

don't think I saw it there.

22

Q. I meant does the debtor have a document

23

like that in its possession, the 2018 return?

24

A. I don't know. I can check. We already

25

agreed we'll send you the proof of filing or proof

- Lichtenstein, p. 258, l. 16 through p. 259, l. 9 (no video)

Page 258

1 M. LICHTENSTEIN

2 Do you see that?

3 A. Which page?

4 Q. Same page, line item 15.

5 A. Okay.

6 Q. Who was that interest paid to?

7 A. Well, if it was 2019, then probably

8 Benefit Street.

9 Q. Do you know that for a fact?

10 A. I don't know that, no. As we're sitting

11 here, I don't know.

12 Q. If you flip to page 3124 --

13 A. Which page on the return?

14 Q. 5.

15 A. Okay.

16 Q. So you see that same line item 19A, Loans

17 from Partners? At the beginning of the year, the

18 loan account was \$9,605,000.37 and it went down at

19 the end of year to \$6,383,928, correct?

20 A. Yes.

21 Q. And the capital account went from

22 \$11,400- million down to \$8,800,000?

23 A. Yes.

24 Q. Do you know why the capital account went

25 down?

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M. LICHTENSTEIN

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A. I will -- again, I will not get into
CPA-level analysis of the tax return.

Q. My question is: Do you know why it went
down? If you don't, you don't.

A. I said I will not be responding on behalf
of my CPA. I can tell you that some of it is
depreciation. There's other accounting principles
that can be involved, and that is it.

Q. If you flip to Bates stamp 3137.

A. Yeah.

Q. You see description property fee from the
Williamsburg Hotel BK, LLC, \$500,000?

A. Yes.

Q. Is that the income --

A. It's freezing up. One minute. 3145?
Which page are you talking about now?

Q. 3137, sir.

A. Okay. What's your question?

Q. So I'm assuming, based upon your prior
testimony, that that's the income generated at the
hotel for 2019?

A. That's what's left. The income is filed
under -- income and expenses are filed under the
management company and this is what's left at the

- Lichtenstein, p. 282, l. 6 through p. 283, l. 21 (video - p. 282, ll. 6-22 and p. 283, l. 12-21 only)

Page 282

1 M. LICHTENSTEIN

2 question?

3 Q. Mayer Brown has already been paid. Tell

4 me about that.

5 A. You can discuss with Mayer Brown.

6 Q. I'm asking you, sir, as the debtor's

7 representative, how has Mayer Brown been paid?

8 A. I don't think it's part of the deposition

9 topics not to discuss how much or how Mayer Brown

10 has been paid.

11 Q. It's absolutely germane, sir.

12 A. Well, I disagree.

13 Q. How much has Mayer Brown been paid?

14 A. I'm not going to answer that now.

15 Q. Has there been a court order approving

16 the debtor's payment of Mayer Brown's fees?

17 A. I will not be answering any questions

18 about his relationship with Mayer Brown.

19 Q. Has the debtor paid Mayer Brown without

20 an appropriate court order in place?

21 A. I will not be answering any questions

22 about our relationship with Mayer Brown.

23 MR. KELLEY: I think what Mr.

24 Lichtenstein is -- Mr. Lichtenstein, I think

25 what Mr. Freedman is asking is are you aware

Page 283

1 M. LICHTENSTEIN

2 of any payments that have been made without
3 any existing orders to the law firm.

4 MR. FREEDMAN: No, that's not my
5 question. I want to know about any payments
6 made to Mayer Brown with respect to its
7 representation of debtor.

8 MR. KELLEY: Okay. Just trying to get
9 you an answer.

10 A. I will not be responding to any questions
11 about Mayer Brown.

12 Q. And you do realize that payment of a law
13 firm that is not approved by the bankruptcy court
14 could be a basis for the appointment of Chapter 11
15 trustee?

16 Do you understand that, sir?

17 A. You do realize payment could be made in
18 various different entities and that Mayer Brown is a
19 much more prestigious firm than your own and
20 whatever they're doing is done 100 percent on the up
21 and up.

22 MR. FREEDMAN: Move to strike once
23 again as unresponsive.

24 Q. Anything else you want to add to this?
25 Because it is going to be germane to the appointment

- Lichtenstein, p. 293, l. 20 through p. 294, l. 6 (no video)

Page 293

1 M. LICHTENSTEIN

2 behalf of the debtor -- not the lawyers.

3 Who on behalf of the debtor negotiated

4 and agreed to that settlement?

5 A. The principals together.

6 Q. You and Toby, correct?

7 A. Yeah.

8 Q. And who did you negotiate that with on

9 behalf of the management company?

10 A. I don't understand the question.

11 Q. Well, you just testified that you and

12 Toby negotiated on behalf of the debtor.

13 Who did you negotiate that on behalf of

14 --

15 MR. FREEDMAN: Strike that.

16 Q. Who did you negotiate that with on behalf

17 of the management company? Who was on the other

18 side of that negotiation?

19 A. Negotiated with ourselves.

20 Q. And what due diligence did the debtor do

21 to determine the financial wherewithal or ability

22 for the management company to pay the 4824,000 over

23 a year if the debtor's plan is not confirmed?

24 A. First of all, I don't believe I have to

25 provide you any information on that. The

M. LICHTENSTEIN

1
2 wherewithal the management company pays is none of
3 your business, number one. Number two, the basic
4 response is the same people who provided \$30 million
5 to the debtor can definitely provide that amount of
6 money if necessary.

7 Q. Are you and Toby going to guarantee the
8 payment of the \$824,000 to the debtor?

9 MR. KELLEY: Objection. Form.

10 A. We're not going to provide anything more
11 than what was provided already.

12 Q. I'm just understanding -- trying to
13 understand, sir, as a fiduciary on behalf of the
14 debtor, how did you make or what determination did
15 you make in respect to the ability of the management
16 company to pay that \$824,000 over a year if the plan
17 is not confirmed? Is there anything more you can
18 tell me?

19 A. There's a track record of \$10 million
20 being provided over five years. So that should
21 definitely not be an issue, to answer your question.

22 Q. That was provided by you and Toby?

23 A. And the management company is owned by me
24 and Toby.

25 Q. Are you going to guarantee the management

- Lichtenstein, p. 296, l. 15 through p. 297, l. 6 (video)

Page 296

1 M. LICHTENSTEIN

2 Q. Over the past four years, how many

3 bankruptcy proceedings other than this one have you

4 and/or Ms. Moskovits been involved in, either

5 directly or through one of your affiliated

6 companies?

7 A. We were involved in two more

8 bankruptcies, and one is out of bankruptcy already,

9 almost.

10 Q. One would be 232 Seigel?

11 A. 232 Seigel is already out, so two, I

12 guess, are out already.

13 Q. Not my question. I didn't ask you what's

14 in and out.

15 I asked you: In the past four years,

16 how many bankruptcies have you been involved in?

17 A. And I responded. We've been involved in

18 two more bankruptcies, and one is out already. In

19 fact, there was a closing already yesterday. And

20 the other one is almost resolved, too.

21 Q. The one that closed yesterday is in re:

22 232 Seigel?

23 A. Closed yesterday already, yes.

24 Q. And that one, you're fighting with a

25 lender as well, right?

Page 297

M. LICHTENSTEIN

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A. That one is Fortress -- I guess Fortress and Benefit Street are in a competition on who is the biggest asshole lender in New York City. So I think Benefit Street might even take -- might win that one, but we'll see.

7
8
9
10

MR. KELLEY: Let's just stay with the question. The extra comments are -- while I understand the anger, let's just stick to the question.

11
12
13
14

Q. So my question was, before you started using profanity, sir, was you are in litigation with a lender with respect to the 232 Seigel project, correct?

15
16
17
18
19
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24
25

A. I am in litigation with two lenders, Benefit Street and Fortress, and I have very fine relationships with multiple other lenders where I'm building projects and everything is going fine.

There are two lenders only, Benefit Street and Fortress, who are -- and I will look for a different description -- who are -- let's call it jerks or bad predatory lenders who we are resolving our issues with.

One has already been almost resolved and the other one will be resolved on April 7th.

- Lichtenstein, p. 112, l. 24 through p. 113, l. 10 (video)

Page 112

M. LICHTENSTEIN

this amount on average. This is a business running between 20 and 25 million a year in revenue, so 250,000 is not a huge amount that I will remember from a year ago who said what to who.

I would assume responsibility as the owner and manager of the management company and the owner of the debtor for whatever transfers were made. Yes.

Q. So you said two or three times the money was transferred to cover payroll?

A. I did not --

Q. You didn't say that?

A. I said expenses. I did not say payroll. I said that you're obsessing about an amount of \$250,000 when that is only a payroll weekly average cost. The weekly average expenses are -- run between 300 and 350,000 a week.

This obsession with \$250,000, if that is the only thing that you have, then we are absolutely in great shape and it just shows what an amazing operation we're running.

Q. Sir, you're being extremely argumentative, and I would appreciate, again, if you

M. LICHTENSTEIN

1
2 stopped and just answered the question.

3 A. I'm going to stop you right there.
4 Please do not say false statements. I'm responding
5 to your questions and I'm responding and providing
6 information.

7 You don't like the answers, and you
8 will not like most of my answers, actually,
9 because you are representing a lying, thieving
10 entity who is trying to steal my building away
11 from me.

12 So you will not like most of my
13 answers, and I will continue answering with the
14 truth, which you will not like.

15 Q. So --


16 A. Please do not say I'm not responding to
17 your questions.

18 MR. KELLEY: I appreciate that response
19 from both of you all, but I'm going to say
20 Gary, please, I will instruct my witness. If
21 you have an objection, you're familiar with
22 the protocols. Please assert it or exercise
23 it, but please proceed with the questions.
24 But please do not give instruction to my
25 witness.

2. Moskovits

- Moskovits, p. 493, l. 2 through p. 494, l. 25 (video - p. 493, l. 4 through p. 494, l. 25 only)

Page 493

1  TOBY MOSKOVITS VOL. II

2 A. The documentation seems to speak for

3 itself.

4 Q. And, ma'am, you would agree with me

5 that the borrower under this loan agreement is

6 the Debtor, correct?

7 A. That's a legal conclusion.

8 Q. Who do you think was a borrower in

9 the loan transaction between my client and the

10 Debtor?

11 A. I'm not a lawyer. I can't -- I'm not

12 answering that. It's a legal conclusion.

13 Q. You have no idea who entered into the

14 loan transaction with my client; is that your

15 testimony?

16 A. You're asking a legal question. I'm

17 not --

18 Q. No, it's -- no. You're the --

19 A. You're asking a legal question.

20 Q. You're the Debtor's representative

21 here today.

22 You can't even tell me who entered

23 into the loan transaction with my client?

24 A. If you want to ask about a specific

25 document, maybe show it to me and ask a very

TOBY MOSKOVITS VOL. II

specific question.

Q. No, I'm not going to waste time. If you can't answer a simple question as who was the borrower --

A. I don't know what the question is. I don't know what the question is. What's the question?

Q. You're interrupting, ma'am. Please stop.

Who was the borrower in the loan transaction with Benefit Street that is the subject of all the controversy in this bankruptcy case? Who was the borrower?

A. Are you asking for the name of the entity?

Q. Sure. Let's start there.

A. So why don't you show me the signature block so I can remember the exact name of the entity.

Q. You can't tell me it was the Debtor, as we sit here?

A. You're asking me if the Debtor was the borrower in the -- did the Debtor borrow money from Benefit Street, yes.

- Moskovits, p. 10, l. 3 through p. 11, l. 9 (no video)

Page 10

1 TOBY MOSKOVITS

2 today?

3 A I am in South Florida.

4 Q What's the address where you are

5 currently located?

6 A Is this relevant?

7 THE WITNESS: Gina, my attorney,

8 is it relevant where I'm physically

9 located?

10 MS. PARLOVECCHIO: I think --

11 A I'm in South Florida, in a

12 private home.

13 Q What is the address of the

14 private home that you are located?

15 A I'm not sure why it's relevant.

16 I'm not comfortable sharing that.

17 Q So, you are refusing to answer

18 the question?

19 A I have confirmed that I am in a

20 private home in South Florida. I am here by

21 myself.

22 I am not giving any more

23 information about where I am in a public

24 proceeding.

25 Q Well, your attorney has a right

Page 11



1 TOBY MOSKOVITS

2 to designate information that you provide as
3 confidential and there is a confidentiality
4 stipulation in place.

5 So, if you're concerned about
6 the information becoming public -- let me
7 finish, please ma'am?

8 A I'm not telling you where I am.
9 I told you I'm in South Florida. I've given
10 you my home address, my business address,
11 you're speaking to me representing a firm that
12 has not only published confidential
13 information, but lied in the process, so I'm
14 not comfortable sharing where I am right now.

15 Okay, let's move on.

16 Q How long have you been at that
17 location?

18 Who was speaking?

19 A I arrived last night, somebody
20 just mumbled something, I didn't hear that.

21 Q You arrived last night, did you
22 say?

23 A Yes.

24 Q How long are you staying there?

25 A Over the weekend.

- Moskovits, p. 14, l. 23 through p. 17, l. 25 (no video)

Page 14

1 TOBY MOSKOVITS

2 A Yes.

3 Q If you answer the question, I'm

4 going to assume that you understood it; is that

5 fair?

6 A I will make it clear if I need

7 any more clarification.

8 Q So is my direction fair to you?

9 A Yes.

10 Q It's important for you to allow

11 me to finish asking the question before you

12 answer it so our court reporter can take it

13 down.

14 We have already talked over each

15 other a couple of times, and I want to try not

16 to do that; is that fair?

17 A Yes.

18 Q If at any time you need a break,

19 as long as there is no question pending, just

20 let us know, and we will accommodate you, is

21 that fair?

22 A Yes.

23 Q You understand that you are here

24 in your individual capacity?

25 A I'm not sure what that means.



1 TOBY MOSKOVITS

2 Is that a statement, a question?

3 Q Do you understand that you're
4 here to give testimony in your individual
5 capacity?

6 A So I would defer to my lawyer.
7 Am I testifying on behalf of an entity, myself
8 or both, I'm not sure.

9 If you're making a statement,
10 then I will accept it. It was not important to
11 the scheduling of the proceeding.

12 Q It was a question, ma'am.
13 Do you understand that you are
14 appearing today to give testimony in your
15 individual capacity?

16 That's a question mark at the
17 end?

18 A I am deferring to my attorney
19 because I don't know that to be the case, I do
20 not understand as to who, on whose behalf I am
21 testifying.

22 Can I ask my attorney to please
23 clarify?

24 Q No, no, I'm asking the
25 questions.



1

TOBY MOSKOVITS

2

So, ma'am, is it fair to say

3

that you have no -- idea in what capacity --

4

A If you are --

5

Q Let me finish asking the

6

question, ma'am that was the direction I gave

7

you and we agreed to.

8

You have no idea as you sit here

9

today in what capacity you are to provide

10

testimony.

11

Is that accurate?

12

A My response is I am prepared to

13

provide testimony in an individual capacity or

14

on behalf of an entity as advised by my

15

attorney.

16

I haven't finished my response,

17

and you're being overly combative on what

18

should be an administrative discussion in a

19

very simple administrative question I was

20

answering.

21

So, I don't even begin to

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understand why you are hot in the collar.

23

The answer is I am here as an

24

individual, and I know that there has been some

25

discussion as to which, between myself and

Page 17



1 TOBY MOSKOVITS

2 Mr. Lichtenstein, who is going to be testifying
3 on behalf of which entities.

4 So I think it's reasonable and
5 legitimate to defer that question to my
6 attorney.

7 With regard to -- I'm here in an
8 individual capacity, I can tell you that to the
9 best of my knowledge yes.

10 If you're telling me that I'm
11 not testifying on behalf of any other entities,
12 then I will take it at face value.

13 I repeated --

14 Q I just want to know as you sit
15 here today what is your understanding in the
16 capacity or capacities in which you are to
17 provide testimony? That's all I'm asking.

18 A The answer is I don't know.

19 Q Okay.

20 A I know there is discussion as to
21 who is testifying on behalf of which entity.

22 I am here as an individual and I
23 have asked a legitimate question, an
24 administrative scheduling question of my
25 attorney and I don't understand.

- Moskovits, p. 56, ll. 13-22 (video)

Page 56

1 TOBY MOSKOVITS

2 A The FIA, that's an entity that's

3 a name that I'm familiar with from my dealings

4 with him.

5 Q David Goldwasser?

6 A Yes.

7 Q Actually, FIA Heritage Holdings

8 LLC is listed as a creditor on the bankruptcy

9 schedules filed in this case; are you aware of

10 that?

11 A If that's what the document

12 says, then that's what the document says.

13 Q And the document provides that

14 FIA Heritage Holdings LLC has a claim against

15 the Debtor for \$3 million.

16 Are you aware of that?

17 A The document speaks for itself.

18 Q Are you aware, is my question,

19 ma'am.

20 A The document, I would have to

21 see the document, the document speaks for

22 itself.

23 Q And are you aware that the claim

24 is listed as undisputed, are you aware of that?

25 A I would have to see the

- Moskovits, p. 99, l. 25 through p. 100, l. 10 (no video)

Page 99

1 TOBY MOSKOVITS

2 but keep going, I am responding again that the

3 EIDL loan is a loan that would need to be

4 repaid, that as per my attorney was addressed

5 in other capacities and was outside the scope

6 of Mr. Huebscher's examination.

7 Q It's not outside the scope of my

8 deposition, ma'am, so that's why I am asking

9 it.

10 A I responded to you, it is a loan

11 that will need to be repaid, not by the Debtor,

12 it will need to be repaid by us individually,

13 period.

14 Q Was the loan applied for in the

15 name of the management company; yes or no?

16 A I don't have the documents in

17 front of me.

18 Q You have no recollection as you

19 sit here today, that's your testimony?

20 A I don't have the documents in

21 front of me. If you show me very specific

22 documents, I can answer.

23 The EIDL money is a loan, it is

24 a loan that will need to be repaid.

25 Q Is it your testimony, ma'am,

Page 100

TOBY MOSKOVITS

1
2

that you can't remember in what name in July
2021 this \$350,000 loan was taken out under, is
that your testimony?

5

A My testimony is --

6

MS. PARLOVECCHIO: Objection.

7

A My testimony is that the EIDL

8

money is a loan. If you ask me for anything

9

more specific, I would need to go check the

10

records.

11

So please don't put words in my

12

mouth, okay?

13

I would need to check the

14

record. You are asking me about voluminous

15

information, employee records, documents that

16

were signed over the course of seven or eight

17

years.

18

No, I do not have all that

19

information in my head, I would have to check

20

the records.

21

Q This was just six months ago,

22

right?

23

MS. PARLOVECCHIO: Gary, I'm

24

assuming you have this in front of you.

25

MR. FREEDMAN: I don't. If you

- Moskovits, p. 106, ll. 14-24 (no video)

Page 106

1 TOBY MOSKOVITS

2 point on page 5 of 36, what is Northside

3 Management LLC?

4 A That's an entity through which

5 Michael Lichtenstein and I do business.

6 Q And what business does Northside

7 Management LLC do?

8 A It's in the related real estate

9 management industry.

10 Q And what properties?

11 A Northside is an LLC, I'm not

12 sure if it has actual -- if it has an actual

13 operating business, I would have to confirm.

14 Q And why did the management

15 company wire \$252,100 to Northside Management

16 LLC on February 25, 2021?

17 A I don't have that information in

18 front of me, so I can't tell you. I would have

19 to go check the record.

20 Q And in February 2021 was

21 Northside Management LLC involved in any actual

22 business enterprise?

23 A I would have to check the

24 records.

25 Q You have no recollection as you

- Moskovits, p. 123, l. 6 through p. 126, l. 20 (no video)

Page 123

1 TOBY MOSKOVITS

2 Q I thought --

3 A I read the actual substance of

4 his report, I don't recall looking at every

5 exhibit.

6 Q Okay, so when you saw the items

7 that we went through on page 5 of 36, did you

8 or have anyone do any due diligence to see if

9 the statement set forth in those two bullet

10 points were true and correct?

11 MS. PARLOVECCHIO: Objection,

12 calls for legal deliberations.

13 A You are asking a lot. I will

14 respond as follows, even though whatever I say

15 you claim is not responsive.

16 Mr. Huebscher, who is so

17 confident in his skill, he refers to himself in

18 the third person, as has a series of addendums

19 after his name, seems to be incapable of doing

20 basic math or understanding basic accounting,

21 and is a very comprehensive response that was

22 prepared line by line to each of his false

23 statements.

24 So, I'm not sure what that has

25 to do with this particular exhibit, which I

1 TOBY MOSKOVITS

2 don't recall seeing.

3 I didn't go through every single
4 exhibit and there are other people that
5 participated in the review of the document,
6 including Michael Lichtenstein, but this
7 particular exhibit I don't recall seeing.

8 So what is the question about
9 this exhibit?

10 Q Ma'am, I'm going to ask you once
11 again if you could just please, please, just
12 listen to my question and try to answer my
13 question.

14 My simple question is --

15 A I believe that I am answering
16 your questions.

17 Q You are not, but that's okay we
18 will get through this, you and I, together.

19 The two bullet points on page 5
20 of 36, the discussion of the \$350,000 EIDL loan
21 and the discussion about the \$252,100
22 transferred to the management company, to
23 Northside Management LLC, did anyone on behalf
24 of the Debtor do any investigation to see if
25 those statements were true and correct?

1
2
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4
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6
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8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

TOBY MOSKOVITS

MS. PARLOVECCHIO: Objection.

A It's a very comprehensive response with regard to Mr. Huebscher's false, deliberately false reports, and I would encourage you to read them.

Q Ma'am, ma'am, I'm sorry, I'm sorry, stop.

The question was did anyone on behalf of the Debtor do any investigation with respect to the validity of those two statements?

It's yes or no.

A As far as I'm aware --

MS. PARLOVECCHIO: Objection to form.

THE WITNESS: Gina, please repeat what you said, because I couldn't hear it.

MS. PARLOVECCHIO: Objection to form. I can't even follow this question I'm sorry.

MR. FREEDMAN: Then, Gina, you tell -- stop stop.

A You are jumping between two

Page 126

TOBY MOSKOVITS

1 things. I don't even understand the connection
2 between the equity contribution and these two
3 lines.
4

5 If you are deliberately trying
6 to confuse me, I don't know what you're doing,
7 I'm repeating again.

8 There is a very detailed,
9 comprehensive response to Mr. Huebscher.

10 Mr. Huebscher's report is an
11 attempt to falsely portray transactions that he
12 has, I don't know if he's 70 or 75 years old,
13 but based on what he put in his report, it's
14 like those cops where after they get caught for
15 taking bribes they go back and review every
16 single case they were involved in; every single
17 report he's ever issued should be reviewed.

18 He's deliberately ignored basic
19 accounting rules, he's deliberately ignored
20 basic information he was provided.

21 I cannot tell you, on a specific
22 line item he has 50 bank statements over seven
23 years and tens of thousands of pieces of paper
24 so.

25 So I did not review every

- Moskovits, p. 169, l. 18 through p. 172, l. 11 (no video)

Page 169

1 TOBY MOSKOVITS

2 MS. PARLOVECCHIO: We can discuss

3 it off the record.

4 THE WITNESS: I said clearly that

5 you put words in my mouth that I didn't

6 say. You asked me to respond.

7 Q Did you listen to Mr. Leitner's

8 deposition yesterday?

9 A No.

10 Q So you don't know how he

11 testified in respect to the effect of the COVID

12 regulations being withdrawn and done away with,

13 right?

14 A I've seen -- I read his

15 appraisal, I did not listen to or read

16 anything, any transcript as relates to his

17 testimony yesterday.

18 Q Between the foreclosure action

19 and the bankruptcy filing, so that would be

20 June of 2019 through February of 2021, what

21 efforts did the Debtor undertake to refinance

22 the BSP or the Benefit Street debt?

23 A Just so I understand, could you

24 clarify again, you are asking about from June

25 of 2019 until February of 2021?

Page 170

TOBY MOSKOVITS

1
2

Q Yes, ma'am.

3

A So, I think it was in December

4

of 2018 we had --

5

Q Stop, I specifically asked

6

you --

7

A In order to respond to that I

8

need to share a piece of information.

9

So I don't know why that's to

10

your detriment to listen to me for a second.

11

I am asking for you to be

12

respectful for a second, maybe it will be

13

faster.

14

In the three minutes you didn't

15

let me speak, I would have finished what I was

16

saying.

17

In December of 2018 after an

18

extensive amount of work on my part, okay, I

19

had a loan a term sheet from Natixis Bank that

20

would have paid off Benefit Street in full.

21

Why I secured it was because we

22

were feeling very deeply abused by their

23

behavior on St. John's, and then were terrified

24

as to what they were going to do to us on the

25

Williamsburg Hotel, having gotten all kinds of

TOBY MOSKOVITS

1
2 crazy offers from Mike Comperator to buy the
3 offer from us which I believe is in the record.

4 Once Benefit Street called a
5 default, hours after I sent a request for a
6 payoff letter to Michael Goodman, with a copy
7 of a fully executed term sheet, everybody in
8 the market knew we were in default, they
9 refused to cure the default even though they
10 were paid interest.

11 So, our ability in June of 2019
12 when they filed foreclosure to find a lender
13 was severely hampered and was severely hampered
14 going back to December of 2018 when
15 unexplainably, even though we continued to get
16 the interest paid, which your client has
17 stipulated to in open court, they refused to
18 put the loan back into compliance.

19 Q Move to strike, I move to -- I
20 move to strike your answer as unresponsive,
21 ma'am.

22 A The answer was very responsive,
23 it's extremely difficult to refinance a loan in
24 default.

25 Q The simple question is what

Page 172

TOBY MOSKOVITS

1
2

efforts did the Debtor undertake between June
2019 and the filing of this bankruptcy case to
refinance the Benefit Street debt?

3
4
5 A My response is I gave you
6 background that is critical to --

7 Q I don't need the background, I
8 want to know what efforts between that time
9 frame, if any?

10 A It is extremely difficult to
11 refinance a loan on a property in default.

12 Q Is the answer none, is the
13 answer none?

14 A The answer is I spent a year, I
15 I spent six months looking for debt in the last
16 two quarters of 2018.

17 Q Is the answer none, ma'am?

18 A The answer is --

19 Q None?

20 A The answer is my efforts to
21 refinance started in May of 2018.

22 The efforts to refinance this
23 loan started in May of 2018, and were severely
24 hampered by a default, a technical default that
25 was unexplainable, that the lender refused to

- Moskovits, p. 173, l. 5 through p. 174, l. 11 (no video)

Page 173

1 TOBY MOSKOVITS

2 cure.

3 The efforts to refinance lead

4 back to December.

5 Q What efforts specifically

6 between June 2019 and February 2021, that's my

7 question, ma'am.

8 For the third time I'm trying to

9 get an answer to that question, not yours.

10 A With an active default, the

11 outreach we were making to find lenders was

12 unsuccessful.

13 Q Tell me about the outreach

14 between those dates, tell me about the outreach

15 between those dates; who did you contact?

16 A I don't recall specific, the

17 specific lenders, I would have to go back and

18 check my records.

19 Q Can you tell me a single lender

20 that you reached out to between those two dates

21 to try to refinance the Benefit Street debt?

22 A single one?

23 A Alliance Bernstein.

24 Q Who is that?

25 A Alliance Bernstein. I recall

Page 174

TOBY MOSKOVITS

1
2

meeting with Alliance Bernstein.

3

Q When was that contact?

4

A What do you mean, what was that

5

contact?

6

Q When?

7

A It was after the foreclosure the

8

start of the foreclosure.

9

Q Any other inquiries?

10

A I would have to check my

11

records.

12

But the feedback -- I'm trying

13

to respond.

14

Q No, ma'am. There is no question

15

pending. Stop, stop.

16

MS. PARLOVECCHIO: She's not

17

saying anything.

18

Q By the way, the Natixis term

19

sheet had contingencies, right?

20

A I don't have the document in

21

front of me, I can't tell you. It goes back to

22

2018.

23

Q You can't recall?

24

A The contingencies are irrelevant

25

because within an hour or two of getting the

- Moskovits, p. 182, ll. 5-18 (no video)

Page 182

1 TOBY MOSKOVITS

2 the inquiry of Alliance Bernstein?

3 A They issued a term sheet, which

4 they ultimately withdrew.

5 Q Did the debt reflected in the

6 term sheet, would that have been sufficient to

7 take out my client's debt?

8 A I need to go back and check, but

9 I recall that that would have been sufficient

10 to take out the debt.

11 Q Did that term sheet contain

12 contingencies?

13 A I don't have the document in

14 front of me.

15 Q Who were you dealing with at

16 Alliance Bernstein?

17 A I don't recall the individual's

18 name, I have to go back and check my records.

19 Q Were you the principal person on

20 behalf of the Debtor that was dealing with

21 Alliance Bernstein?

22 A Yes.

23 Q Did the folks or the person that

24 you were dealing with at Alliance Bernstein

25 tell you why the term sheet was withdrawn?

- Moskovits, p. 342, l. 21 through p. 343, l. 8 (no video)

Page 342

1 TOBY MOSKOVITS

2 apple, I apologize.

3 Q Do you have it now?

4 A I have Exhibit 8, but it's

5 lender's objection to confirmation, is that

6 what it is?

7 Q Go to page 250, please.

8 A One second, that's all the way

9 down, hold on.

10 A So I am looking at the numbers

11 on top, so it's 250 of 326, is that where you

12 want me to go to?

13 Q Yes, ma'am.

14 Q You will let me know when you

15 are there, please?

16 A I have to scroll all the way

17 down, yes.

18 It's in the exhibits, right? I

19 am almost there, hold on.

20 Okay, I have it.

21 Q Do you see the top it's entitled

22 fourth amendment to operating agreement of 96

23 Wythe Acquisition LLC?

24 A Yes.

25 Q And you see on page 259 that you

Page 343

TOBY MOSKOVITS

1
2 signed this fourth amendment to operating
3 agreement of 96 Wythe Acquisition LLC on behalf
4 of the two members?

5 A Yes, that appears -- that
6 appears to be my signature. I'm going to take
7 it that this is what you say it is, which is
8 the amendment to the operating agreement.

9 Q And you recall that this fourth
10 amendment to operating agreement of 96 Wythe
11 Acquisition LLC was required by Benefit Street
12 as part of the closing of its loan to the
13 Debtor?

14 A I have to read it because --
15 give me a second.

16 Q Of course.

17 A I see it, but I'm not sure I
18 understand exactly what 100 percent the purpose
19 of it was.

20 I have to refer back to the org
21 chart, why don't you go ahead and ask the
22 question and then I could answer to the best of
23 my ability.

24 Q You do recall that the date of
25 this document, December 13, 2017, coincided

- Moskovits, p. 344, ll. 9-25 (no video)

Page 344

1 TOBY MOSKOVITS

2 with the closing of the loan from Benefit

3 Street to the Debtor, correct?

4 A Yeah, I mean I don't know

5 exactly, but it's somewhere in December, so if

6 you tell me the closing date was the 13th, then

7 that's fine, that's somewhere in that time

8 frame.

9 Q And if you flip to the second

10 page, which is 251?

11 A Yeah.

12 Q Do you see on the bottom it

13 says, "Company has not and will not," do you

14 see that?

15 A Yes.

16 Q So, you would agree with me that

17 the items following C here are matters for

18 which the Debtor agreed that it has not and

19 will not do in the future, correct?

20 A Yeah, but I'm looking at this,

21 I'm not 100 percent clear on the relationship

22 between this and the Debtor, so I would need to

23 consult with my attorney to have someone

24 explain to me the relationship between this

25 entity and the Debtor.

- Moskovits, p. 346, l. 9 through p. 347, l. 4 (no video)

Page 346

1 TOBY MOSKOVITS

2 Q I don't know, ma'am, I'm not
3 going to answer questions, I'm just trying --

4 A I guess I'm not understanding.
5 I'm not sure that I understand the relationship
6 between this entity and the Debtor, but maybe
7 ask your question and then maybe it will be
8 more clear.

9 Q You do agree with me, 96 Wythe
10 Acquisition LLC is the Debtor, correct?

11 A That is correct.

12 Q And that this document says,
13 "This fourth amendment to operating agreement
14 of 96 Wythe Acquisition LLC, a New York limited
15 liability company, dated as of December 13,
16 2017, is among the individual entities signing
17 it below," so you would agree with me that this
18 is the fourth amendment to the operating
19 agreement for the Debtor?

20 A Yeah, but what I'm telling you
21 is I'm not familiar with this exact document
22 and I don't have the org chart in front of me.

23 So I would need to consult with
24 my lawyer to have them explain to me the
25 relationship between this and my ownership and

Page 347

TOBY MOSKOVITS

1
2 the actual Debtor, and I don't understand
3 that -- I don't understand that just from
4 looking at this.

5 Q Putting that aside, you would
6 agree with me that subsection C or starting at
7 section 3 says, "single purpose entity
8 provisions," right?

9 A Where are you up to on which
10 page is that?

11 Q 251.
12 Do you see that section 3,
13 single purpose entity provision?

14 A I see that.

15 Q Then C says, "Company has not
16 and will not," do you see that?

17 A Yes.

18 Q And then after that it lists 24
19 separate paragraphs of items that the Debtor
20 has not and will not do, correct?

21 A I mean in the last four seconds
22 I can't read all of them, but I note that there
23 is -- there is many items over there in the
24 bottom.

25 I get to 24, yes I count to 24.

- Moskovits, p. 348, l. 3 through p. 349, l. 18 (no video)

Page 348

1 TOBY MOSKOVITS

2 Q Okay.

3 One the items that the Debtor

4 committed not to do under this operating

5 agreement was, Incur any indebtedness, secured

6 or unsecured, direct or contingent, other than

7 the debt that's referring to the debt from

8 Benefit Street, unsecured trade payables, I am

9 paraphrasing just to get through this, that

10 should not be more than 90 days past due,

11 permitted equipment leases.

12 So you would agree with me that

13 the Debtor did not comply with this provision,

14 right?

15 A I put on the record I don't

16 understand the relationship between this entity

17 and the Debtor and any monies taken -- any

18 obligations taken on by the Debtor were solely

19 to support the business and/or to pay interest

20 to the Benefit Street Partners as a lender, so

21 I'm not sure what specifically you are

22 referring to.

23 Q I'm really trying to get through

24 this.

25 So you've already testified that

Page 349

TOBY MOSKOVITS

1
2 the Debtor's principals made loans of \$11 to
3 \$12 million to the Debtor, right?

4 A Yes.

5 Q And you've testified about
6 another, I forget who it was, but another \$2.5
7 million loan made to the Debtor?

8 A Yes.

9 Q So it's fair that the Debtor did
10 not comply with section C here, correct?

11 A I repeat again that I don't
12 understand the connection between this document
13 and the Debtor, and I will add, as well, that
14 any monies that were provided were in support
15 of the business and in the furtherance of the
16 business plan, and to pay interest to Benefit
17 Street when they refused to release funds from
18 the escrow.

19 Q And sub 4, "Comingle its funds
20 or assets with the funds or assets of any other
21 person, or maintain its assets in such a manner
22 that it will be costly or difficult to
23 segregate, ascertain or identify its individual
24 assets from those of any other person."

25 So it's fair to say that the

- Moskovits, p. 359, l. 20 through 361, l. 14 (no video)

Page 359

1 TOBY MOSKOVITS

2 What are you referring to

3 specifically?

4 Q I am just asking you as the

5 Debtor's representative here today, did the

6 Debtor comply with (xiv) of the operating

7 agreement?

8 MS. PARLOVECCHIO: Objection.

9 A You need to give me a time

10 frame, I'm not even familiar -- I'm not even

11 sure I understand exactly the relationship

12 between this document and our ownership in the

13 entity, I ask for a more specific question.

14 Q December 13, 2017 forward, and

15 I'm really focusing on affiliate, okay, with

16 respect to any agreements with any affiliates

17 of the Debtor,

18 A To the best of my knowledge we

19 complied with this.

20 Q Looking at page 254, did the

21 Debtor comply with (xxii) that it wouldn't

22 permit any affiliate independent access to its

23 bank accounts?

24 A I'm not aware of anyone who was

25 provided access to the bank accounts other than

Page 360

TOBY MOSKOVITS

1
2

the Receiver; and then subsequently --

3

Q Did the management company have

4

access to the Debtor's bank accounts?

5

A The management company was

6

basically collecting -- the management company

7

on its own was collecting monies and paying

8

bills.

9

Q My question is --

10

A It didn't have control.

11

Q Did the management company have

12

access to the Debtor's bank accounts?

13

MS. PARLOVECCHIO: Objection,

14

vague.

15

A The management company had its

16

own accounts and the Debtor had its own

17

accounts.

18

Q My question is did the

19

management company have access to the Debtor's

20

bank accounts?

21

A What does the word access mean?

22

You mean did they have the right to send money

23

to the Debtor's bank accounts, is that the

24

question?

25

Q Did they have the ability to

Page 361

TOBY MOSKOVITS

1
2 move money in or out of the Debtor's bank
3 accounts is the question.

4 A Anybody can move money in, you
5 can send a wire or a transfer.

6 The management company did not
7 have control over the management company's bank
8 accounts.

9 Q Did it have the ability to move
10 money out of the Debtor's bank accounts?

11 A Like I said previously, the
12 Debtor controlled its own bank accounts and the
13 management company controlled its own bank
14 accounts.

15 Q I'm not asking control.

16 A The access is no.

17 Q The word is access, did it have
18 access?

19 MS. PARLOVECCHIO: Objection.

20 A Sorry?

21 Q Did it have access? Did the
22 management company have access to the Debtor's
23 bank accounts?

24 MS. PARLOVECCHIO: Objection.

25 A You asked me previously if the

- Moskovits, p. 361, l. 21 through p. 362, l. 16 (no video)

Page 361

1 TOBY MOSKOVITS

2 move money in or out of the Debtor's bank

3 accounts is the question.

4 A Anybody can move money in, you

5 can send a wire or a transfer.

6 The management company did not

7 have control over the management company's bank

8 accounts.

9 Q Did it have the ability to move

10 money out of the Debtor's bank accounts?

11 A Like I said previously, the

12 Debtor controlled its own bank accounts and the

13 management company controlled its own bank

14 accounts.

15 Q I'm not asking control.

16 A The access is no.

17 Q The word is access, did it have

18 access?

19 MS. PARLOVECCHIO: Objection.

20 A Sorry?

21 Q Did it have access? Did the

22 management company have access to the Debtor's

23 bank accounts?

24 MS. PARLOVECCHIO: Objection.

25 A You asked me previously if the

Page 362

1 TOBY MOSKOVITS

2 management company could move money in and out,
3 and I responded to that.

4 I would need to check if the
5 management company also had view access, I
6 don't know.

7 But the management company did
8 not have control, it could not move money out,
9 I don't know what access.

10 You are using a generic word,
11 what does access mean?

12 You want to clarify?

13 Q Yeah, it's the language used in
14 your own operating agreement, ma'am.

15 A Which I tell you I don't know
16 exactly how this relates to the actual Debtor.

17 So you want to show me which
18 clause are you referring to?

19 Q I am going to move on, I will
20 mark as the next exhibit which will be 9.

21 (The above described document was
22 marked Exhibit 9 for identification as of
23 this date.)

24 A I don't see anything there yet,
25 did you upload it?

- Moskovits, p. 404, ll. 3-12 (no video)

Page 404

1 TOBY MOSKOVITS

2 think you want to hear my answer.

3 A As you like to say, the document

4 speaks for itself.

5 It's a document identified as a

6 hotel management agreement as unsigned, it

7 speaks for itself.

8 Q I never say that.

9 A I'll say that the document

10 speaks for itself. It's unsigned and the

11 version that was supposedly sent to my attorney

12 had signature blocks on it.

13 MR. FREEDMAN: Gina, can you have

14 her stop?

15 There is no question pending.

16 There is no question pending.

17 A No problem.

18 Q Do you have a copy of an

19 assignment of hotel management agreement that

20 talks about compensation to the hotel manager

21 consistent with what we have marked as Exhibit

22 9?

23 In other words, rather than 3

24 percent of gross rent, the assignment says 3

25 percent of all revenue, and then 10 percent of

- Moskovits, p. 410, ll. 11-25 (no video)

Page 410

1 TOBY MOSKOVITS

2 with the Debtor in writing?

3 MS. PARLOVECCHIO: Objection.

4 A No, that was clear in the

5 e-mails, and that's why my attorney kept trying

6 to limit the documents and he kept asking to

7 include the clauses that were of concern for

8 the attorneys at Stroock & Stroock & Lavan to

9 put that into the loan agreement, and they

10 clearly were not interested in doing that.

11 Q Did the management company ever

12 have a technical services agreement, a

13 development agreement with the Debtor?

14 MS. PARLOVECCHIO: Objection to

15 form.

16 A I need to check my records, I

17 don't remember.

18 Q You don't recall it as you sit

19 here, right?

20 A I don't recall. I would have to

21 go back and check my records if it was

22 formalized in an agreement, there wasn't a

23 management agreement, so it may not have been,

24 but I don't know for certain, I would have to

25 go back and check my records.

- Moskovits, p. 462, ll. 11-24 (no video)

Page 462

1 TOBY MOSKOVITS VOL. II

2 A. I -- yes.

3 Q. And you and Mr. Lichtenstein own

4 50 percent of the Debtor, correct?

5 A. I answered that question last time.

6 I gave you a little more nuance on the --

7 Q. Okay. But, generally, that's

8 correct, right, ma'am?

9 A. I gave you a very specific answer to

10 that question last time.

11 Q. Either you -- either you or your

12 trust own 50 percent of the Debtor, correct?

13 A. I answered that question already.

14 Q. Well, I'm asking again, ma'am. Just

15 answer the question so I can move on.

16 A. I answered the question. I went

17 through ery specifically who owns what. I had

18 the org chart in front of me. I'm not responding

19 to that without the org chart. But you have the

20 answer in your record.

21 So if you'd move to the next question

22 cause I answered this. I said this has been

23 responded to with specificity off of an org

24 chart. I don't have it in front of me right now.

25 Q. Can you help me understand then what

- Moskovits, p. 464, ll. 17-21 (video)

Page 464

1 TOBY MOSKOVITS VOL. II

2 Q. The attorneys at Stroock required the
3 17-page excessive term management agreement; is
4 that your testimony?

5 MS. PARLOVECCHIO: Objection,
6 mischaracterizes the testimony.

7 Q. They --

8 A. We were asked -- we were asked to
9 prepare a management agreement and we did. That
10 is my response.

11 Q. They gave you a one-page form
12 management agreement, right, not a 17-page
13 management agreement?

14 A. That e-mail that you showed me was
15 never -- I was not included on and I do not
16 recall Mr. Kaiser sending that to me.

17 Q. And tell me why do you need an
18 incentive fee in a management agreement when the
19 owners of the hotel are the owners of the
20 management company?

21 A. The document speaks for itself.

22 Q. No, the document doesn't answer this
23 question.

24 Why do the owners of the hotel and
25 the owners of the management agreement require an

- Moskovits, p. 465, ll. 17-22 (video)

Page 465

TOBY MOSKOVITS VOL. II

incentive fee in the management agreement?

What's the purpose of that?

A. Because as you're aware, there are other parties who are in the ownership of the hotel that were not involved in the management. But beyond that, the document speaks for itself.

Q. You testified a moment ago that --

A. No, I actually didn't testify to that. So maybe you should be more careful with your questions and your record.

Q. Ma'am, stop yelling at me and stop lecturing please.

A. I don't yell. I don't yell. I speak in a very calm voice. I don't yell. The only yelling is coming from you.

Q. Can you tell -- can you tell me any other reason why you and Michael required the hotel to provide -- the hotel, generally, owned by you and Michael to provide an incentive fee to you and Michael?

A. The document speaks for itself.

MS. PARLOVECCHIO: Objection to form.

Q. Can you add anything more than "the document speaks for itself"?

- Moskovits, p. 466, ll. 10-12 (video)

Page 466

TOBY MOSKOVITS VOL. II

A. No. There is a lot -- as you mentioned, there are lot of pages here. So I think -- so, as you read it and you'll understand. The document speaks for itself.

Q. Anything else you can add, ma'am, so I can move on?

A. Is there an open -- is there a pending question?

Q. Any other reason why you and Michael included an incentive fee to you and Michael?

A. The document speaks for itself.

MR. FREEDMAN: Let's bring up the loan document.

A. Are you asking me a question or trying to pull something up?

Q. So, ma'am, approximately, 39 minutes before I took Mr. Lichtenstein's first deposition, the Debtor provided an alleged loan agreement and an amendment to that loan agreement representing a line of credit facility between you and Michael as lender and the Debtor as the borrower.

Are you familiar with that loan?

MS. PARLOVECCHIO: Objection to form.

- Moskovits, p. 473, ll. 3-18 (no video)

Page 473

1 TOBY MOSKOVITS VOL. II

2 What's the question?

3 Q. This loan agreement is between you

4 and Michael Lichtenstein as lender and the Debtor

5 as borrower, correct?

6 A. That's what the signature block seems

7 to show, yes.

8 Q. Do you have any doubt that that's

9 what this agreement is?

10 A. I think the document speaks for

11 itself.

12 Q. Documents don't speak, ma'am.

13 Do you have any --

14 A. -- the word in the doc -- I'm sorry.

15 Q. Do you understand this document or

16 don't you?

17 MS. PARLOVECCHIO: Objection.

18 A. The document speaks for itself.

19 Q. Are you refusing to answer the

20 question?

21 A. What is the question?

22 MS. PARLOVECCHIO: Objection.

23 Q. Is this the loan agreement between

24 you and Michael as lender and the Debtor as

25 borrower?

- Moskovits, p. 474, ll. 7-24 (video)

Page 474

TOBY MOSKOVITS VOL. II

A. This is the third time you're asking me that and my response is I'm looking at the signature blocks and that's what it says. Yes, it is a loan agreement between borrower 96 Wyeth Acquisition and Michael and myself as lender.

Q. And the maximum amount of the line of credit under Exhibit 15 is \$5 million, correct?

A. The document speaks for itself.

Q. Ma'am, please just answer the question. There is --

A. The document speaks for itself.

Q. I'm asking is that your understanding, ma'am?

A. The document speaks for itself.

Q. You're refusing to answer the question?

A. I answered the question.

Q. No, you haven't.

And the Debtor --

A. The document speaks for itself. It's a line of credit agreement and it says, line of credit limit \$5 million. The document speaks for itself.

Q. And the line -- this line of credit

- Moskovits, p. 495, l. 11 through 496, l. 5 (no video)

Page 495

1 TOBY MOSKOVITS VOL. II

2 You have to ask specific questions.

3 Q. And the borrower's --

4 A. I'm not sure what your question is.

5 I'm sorry. I'm not trying to be disrespectful.

6 Q. Okay.

7 MR. FREEDMAN: Then let's show her

8 4.23.

9 Q. Let me know when you have that.

10 A. I see that, yes.

11 Q. Okay. Section 4.23, "Special Purpose

12 Entity. Borrower and each SPE component entity"

13 shall not at all times -- sorry, "shall at all

14 times comply with the requirements set forth on

15 Exhibit C attached hereto and shall not take or

16 permit any action that would result in borrower

17 or any SPE component entity not being in

18 compliance with the representations, warranties

19 and covenants set forth in Section 3.24 and

20 Exhibit C attached hereto."

21 Did I read that correctly?

22 A. The document speaks for itself.

23 Q. I just asked you if I read it

24 correctly, ma'am?

25 A. So, like I said before, I actually

Page 496

TOBY MOSKOVITS VOL. II

1
2 have issues reading the screen. So it's very big
3 strain for my eyes. If you're representing that
4 you're reading it, then the document speaks for
5 itself.

6 Q. Okay. So let's go to Exhibit C now.

7 You see Exhibit C, ma'am?

8 A. Yes.

9 Q. Okay. Exhibit C, "Special Purpose
10 Entity requirements. Borrower covenants and
11 agrees that (A) borrower has not and will not" --
12 and I'm going down to Romanette (iii) -- "incur
13 any indebtedness secured or unsecured, direct or
14 contingent (including guaranteeing any
15 obligation) other than (A) the debt," which is
16 the debt between the Debtor and Benefit Street,
17 "(B), unsecured trade payables and operational
18 debt not evidenced by a note and incurred in the
19 ordinary course of business with trade creditors
20 provided any indebtedness incurred pursuant to
21 subclause B shall not be more than 90 days," and
22 finally, "permitted equipment leases."

23 Okay. So, at the time that the
24 Debtor executed the loan agreement, there existed
25 the line of credit agreement and the amendment to

- Moskovits, p. 532, ll. 2-18 (video)

Page 532

TOBY MOSKOVITS VOL. II

1
2 Q. Ms. Moskovits, the Debtor recently
3 filed tax returns for 2017, '18, '19 and '20,
4 correct?

5 A. Yes.

6 Q. Okay. If I ask you any questions
7 about that tax returns that the Debtor filed, are
8 you competent to testify to them?

9 A. I'm not an accountant. I would have
10 to consult with my account apartment.

11 Q. Right. And I just want to waste
12 time. If I asked you questions about the tax
13 returns, would you just generally tell me that
14 you would need to consult with your accountant
15 and you'd be unable to answer questions?

16 A. I can't answer -- I need -- I would
17 have to consult with my accountant. That is
18 correct.

19 Q. You've been jotting down notes --

20 A. Actually, no. I've been scribbling.
21 I have no notes; scribbling. (Indicating.)

22 Q. Did you bring any writing in with you
23 today?

24 A. No, no.

25 Q. A couple of the tax returns you

3. Lichtenstein MC

- Lichtenstein MC, p. 23, l. 9 through p. 24, l. 9 (video)

Page 23

1 MICHAEL LICHTENSTEIN

2 ago what hotel deals are you referring to?

3 A Well, we just discussed, it was

4 a hotel deal in Brooklyn, there was a hotel

5 deal in Miami.

6 I don't remember now all the

7 deals that were discussed in the last five

8 years.

9 Q And you said something like the

10 Eidolon.

11 What was that?

12 A You know very well what the

13 Eidolon is, because you asked me about it.

14 Q I don't know, sir, so what is

15 it?

16 A I would appreciate if you don't

17 lie, since you very well know what it is,

18 because you asked me about it.

19 So the Eidolon was a source of

20 funds of the management company.

21 Q What is the Eidolon, sir? I

22 don't know, and this is your deposition, so I

23 need an answer to the question so I can move

24 on.

25 A I would appreciate again if you

Page 24

MICHAEL LICHTENSTEIN

1
2 stop lying. You know very well what the
3 Eidolon is, it is a loan provided by the SBA to
4 the management company.

5 Q The EIDL loan, that's what you
6 are referring to?

7 A I really don't appreciate your
8 playing dumb and lying to me three times as if
9 you didn't know what I'm talking about.

10 Q All right.

11 Does the management company have
12 a specific bank account associated with the
13 Miami project?

14 A Not that I remember now.

15 Q Does the management company have
16 a specific bank account associated with the
17 Bushwick project?

18 A I don't remember now which
19 accounts were associated with what, and frankly
20 it's none of your business if it's not related
21 to the Debtor.

22 Q Did the management company ever
23 receive a fee for any work it did on the
24 Bushwick project?

25 A I will not answer that question

- Lichtenstein MC, p. 24, l. 22 through p. 25, l. 17 (video - p. 25, l. 11-17 only)

Page 24

1 MICHAEL LICHTENSTEIN

2 stop lying. You know very well what the

3 Eidolon is, it is a loan provided by the SBA to

4 the management company.

5 Q The EIDL loan, that's what you

6 are referring to?

7 A I really don't appreciate your

8 playing dumb and lying to me three times as if

9 you didn't know what I'm talking about.

10 Q All right.

11 Does the management company have

12 a specific bank account associated with the

13 Miami project?

14 A Not that I remember now.

15 Q Does the management company have

16 a specific bank account associated with the

17 Bushwick project?

18 A I don't remember now which

19 accounts were associated with what, and frankly

20 it's none of your business if it's not related

21 to the Debtor.

22 Q Did the management company ever

23 receive a fee for any work it did on the

24 Bushwick project?

25 A I will not answer that question

1
2

MICHAEL LICHTENSTEIN

now, A, because I don't remember these, if
anything was incurred in the last few years.

4

B, sources of income of the
management company that are unrelated to the
Debtor are none of your business.

7

Q Did the management company ever
receive a fee in respect to the Miami project?

9

A Same answer applies to this,
too.

10

11

Q You are refusing to answer the
question, sir?

12

13

A I am answering the question,
that it's none of your business if the
management company had sources of funds from
other places that are not related to the
Debtor.

17

18

Q Well, sir, since you brought up
the EIDL loan, do I have it correct that there
was a \$350,000 loan that was made under the
EIDL, E-I-D-L, program to the management
company in July 2021, correct?

22

23

A Yes.

24

Q And the funds for that loan were
received into a management company account,

25

- Lichtenstein MC, p. 26, l. 4 through p. 27, l. 9 (video - p. 26, ll. 4-15 and p. 27, ll. 6-9 only)

Page 26

1 MICHAEL LICHTENSTEIN

2 correct?

3 A Yes.

4 Q And thereafter the funds were

5 transferred to an account in the name of

6 Northside Acquisition Partners LLC, correct?

7 A It is none of your business what

8 happened with the funds that were the

9 management company's funds that had no

10 connection to the Debtor.

11 Q You are refusing to answer?

12 A I am not going to respond to any

13 information asked about the use of the EIDL

14 funds, because it's unrelated to the Debtor and

15 it's not the Debtor's money.

16 Q That was going to be my next

17 question, so I need to ask it.

18 What did you or Northside

19 Acquisition Partners LLC do with the \$350,000

20 that was received in respect to the EIDL loan

21 made in July 2021?

22 A The answer is this is not the

23 Debtor's funds and it's none of your business.

24 Q At the time that the management

25 company acquired that \$350,000 EIDL loan, did



1

MICHAEL LICHTENSTEIN

2

it have any contracts or agreements to manage

3

any other projects other than the Williamsburg

4

Hotel?

5

MR. KELLEY: Objection.

6

A

The answer is that it's not

7

anyone's business what other contracts the

8

management company had with other hotels, and

9

I'm not going to answer your question.

10

Q

What was the collateral that the

11

management company provided in respect to the

12

\$350,000 EIDL loan to the government?

13

A

There was no collateral

14

required.

15

MR. FREEDMAN: Let's mark the

16

next exhibit as Exhibit number 2.

17

(The above described document was

18

marked Exhibit 2 for identification as of

19

this date.)

20

Q

You should have it up in front

21

of you in a moment, sir.

22

Let me know when you have it.

23

A

I have it.

24

Q

Okay, so I'm going to refer to

25

the Bates numbers on the bottom. You see the

- Lichtenstein MC, p. 31, l. 16 through p. 32, l. 18 (video - p. 32, ll. 11-18 only)

Page 31

1 MICHAEL LICHTENSTEIN

2 Q Was the receiver that was in

3 place over the Williamsburg Hotel informed of

4 the application for this \$150,000 EIDL loan?

5 MR. KELLEY: Was the receiver

6 informed, was that what the question

7 was? Objection to form.

8 Q It was --

9 MR. KELLEY: Go ahead, Michael.

10 You can answer it if you can.

11 A I don't remember now if he was

12 informed two years ago.

13 It wouldn't have mattered, it

14 wasn't the Debtor's funds, it was the

15 management company's money.

16 Q And has the management company

17 started making payments in respect to this

18 \$150,000 EIDL loan?

19 A As I said, I don't think it's

20 any of the Debtor's or the lender's business

21 the details of the EIDL loan, whether we are

22 making payments or not.

23 Q And if you are making payments,

24 what's the source of funds for the payments

25 being made to the SBA in respect to this

MICHAEL LICHTENSTEIN

1
2 \$150,000 loan?

3 A If there are payments made, then
4 the source of the payments are the management
5 company's own money and it has nothing to do
6 with the Debtor.

7 Q What is the source of the
8 management company's own money?

9 A I do not have to answer that
10 question about the management company to you.

11 Q Does the management company
12 presently have any source of funds that are not
13 directly related to operating the Williamsburg
14 Hotel?

15 A I will not be answering any
16 questions about an entity that is not the
17 Debtor and about the monies that are not the
18 Debtor's.

19 Q So if you flip to --

20 MR. KELLEY: Sorry to interrupt,
21 Gary, I didn't want to interrupt the
22 witness or you, but I will object to the
23 form of the prior question.

24 Sorry, go ahead.

25 Q If you flip to 8210, this is the

- Lichtenstein MC, p. 45, l. 24 through p. 47, l. 2 (video - p. 46, l. 15 through p. 47, l. 2 only)

Page 45

1 MICHAEL LICHTENSTEIN

2 Q Line 1A, gross receipts of sales

3 says \$15,117,101. Do you see that?

4 A Yes.

5 Q And to the best of your

6 recollection, all or most of that would have

7 come from the Williamsburg Hotel?

8 A Most of it, yeah, all or most of

9 it would come from the Williamsburg Hotel.

10 Q What contract or agreement

11 provides for the management company to make a

12 claim of ownership of the gross receipts of

13 sales generated at the Williamsburg Hotel?

14 A First of all, this is not a

15 claim of ownership, necessarily.

16 But the money flows through the

17 Williamsburg Hotel, and as such the accountants

18 decided to book it this way.

19 Q It flows through as a

20 pass-through entity, correct?

21 A I don't want to get into

22 accounting terms, and I don't want to take

23 responsibility for accounting terms now.

24 Q Does the management company have

25 an ownership interest in any of the funds that

1 MICHAEL LICHTENSTEIN

2 flow through its accounts that are generated at
3 the Williamsburg Hotel?

4 MR. KELLEY: Objection to form.

5 Go ahead, you can answer.

6 A As I said, there might be some
7 funds in some years that are not sourced by the
8 Debtor.

9 As to the Debtor's funds that
10 are flowing through the management company, I
11 will not respond as to classifications for tax
12 purposes without an accountant.

13 Q I'm asking a different question,
14 sir.

15 I'm asking you based upon a
16 representative of the management company here
17 today, what is your understanding of the
18 management company's ownership interest in any
19 funds flowing through its accounts that are
20 generated at the Williamsburg Hotel?

21 MR. KELLEY: Objection to form.

22 A And I'm answering as a
23 representative of the management company that I
24 will not respond as to classifications of
25 funding or funds flowing through as it refers

MICHAEL LICHTENSTEIN

1
2

to tax returns and such without an accountant.

3

Q On line 22, ordinary business
income, \$54,460, do you see that?

5

A Okay.

6

Q Is that ordinary business income
generated by anything other than the management
company's relationship with the Williamsburg
Hotel?

10

A I already responded that I am
not sure if there was other income in 2018,
therefore I cannot answer this question right
now with certainty.

14

Q You are familiar with the
bankruptcy schedules filed in this case, sir?

16

A Not really that familiar.

17

Q You reviewed them, we talked
about them last time we took your deposition,
right?

20

A We talked about them. I don't
remember reviewing them.

22

Q I will show you Exhibit 4 and
ask you to flip to page 24 of 33.

24

25

(The above described document was
marked Exhibit 4 for identification as of

- Lichtenstein MC, p. 52, l. 3 through p. 53, l. 11 (no video)

Page 52

1

MICHAEL LICHTENSTEIN

2

A Yes.

3

Q Who was the management company

4

paying interest to in 2018?

5

A I don't remember at all. It

6

could have been to Benefit Street, mezz loan, I

7

don't even know.

8

I don't know, you have to check

9

with the accountant.

10

Q Did the Williamsburg Hotel BK

11

LLC have a lending relationship with Benefit

12

Street?

13

A No.

14

Q Did the management company have

15

a lending relationship with the mezz company,

16

the mezz lender?

17

A No; but it could have made a

18

payment on behalf of the Debtor.

19

I don't know what it is, I have

20

no clue, I have to check with the accountant.

21

Q So assuming all of the revenue

22

reflected on this 2018 return related directly

23

to the operations at the Williamsburg Hotel,

24

how did the management company earn \$54,460 in

25

business income?

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Page 53

MICHAEL LICHTENSTEIN

1
2

A As I said, I will not be

3 answering such questions without an accountant.

4 Q Where was that business income
5 deposited?

6 MR. KELLEY: Objection to form.

7 A Either in the management
8 company's account or back to the Debtor.

9 Q Do you know as you sit here?

10 A Nope, I have no clue, I don't
11 remember now.

12 Q If you flip to page 5 of the
13 2018 return, sir --

14 A Yes.

15 Q -- the balance sheet, schedule
16 A, the cash, \$92, 887.

17 A Did you say page 5?

18 Q 5 of the return, balance sheet,
19 schedule L, cash, beginning of the year,
20 \$92,887, at the end of the year, \$93,562.

21 What was the source of that cash
22 other than operations at the Williamsburg
23 Hotel?

24 A I can't answer you right now
25 about 2018 sources of cash.

- Lichtenstein MC, p. 53, ll. 18-25 (no video)

Page 53

1 MICHAEL LICHTENSTEIN

2 A As I said, I will not be

3 answering such questions without an accountant.

4 Q Where was that business income

5 deposited?

6 MR. KELLEY: Objection to form.

7 A Either in the management

8 company's account or back to the Debtor.

9 Q Do you know as you sit here?

10 A Nope, I have no clue, I don't

11 remember now.

12 Q If you flip to page 5 of the

13 2018 return, sir --

14 A Yes.

15 Q -- the balance sheet, schedule

16 A, the cash, \$92, 887.

17 A Did you say page 5?

18 Q 5 of the return, balance sheet,

19 schedule L, cash, beginning of the year,

20 \$92,887, at the end of the year, \$93,562.

21 What was the source of that cash

22 other than operations at the Williamsburg

23 Hotel?

24 A I can't answer you right now

25 about 2018 sources of cash.

- Lichtenstein MC, p. 55, ll. 14-20 (video)

Page 55

1 MICHAEL LICHTENSTEIN

2 statements. Thank you.

3 Q 12A, intangible assets, \$8,750

4 at the beginning of the year, \$10,500 at the

5 end of the year.

6 What are those assets?

7 A You said \$2,500. It says

8 \$10,500.

9 Q I said \$10,500, but if I said it

10 incorrectly, I will say it again. \$10,500.

11 A And the answer is that I'm not

12 going to answer such questions without my

13 accountant.

14 Q Is it fair to say you're not

15 going to answer any questions with respect to

16 the management company's tax returns?

17 A That is not fair to say at all.

18 I said I won't answer any of

19 these questions right now in this deposition

20 without discussing with my accountant.

21 MR. GLUCKSMAN: Mr. Freedman,

22 this is argumentative. You are not

23 during -- this is not a cage match.

24 MR. FREEDMAN: I didn't hear

25 anything you just said, Mr. Glucksman.

- Lichtenstein MC, p. 56, ll. 9-18 (video)

Page 56

1 MICHAEL LICHTENSTEIN

2 MR. GLUCKSMAN: Mr. Glucksman

3 said this is not a cage match, and I

4 would appreciate if you wouldn't badger

5 my witness.

6 MR. FREEDMAN: I'm not going to

7 even dignify that with a response, sir.

8 MR. KELLEY: Let's proceed.

9 Q By the way, why did the

10 management company wait until February 2022 to

11 file its 2018 return?

12 A As I said, I will not be

13 responding on any questions about the

14 management company that are not related to the

15 Debtor.

16 And I will not be responding on

17 any questions on the tax returns without my

18 accountant.

19 Q We have just marked Exhibit 5,

20 which is the Debtor's 20 -- Exhibit 5 is the

21 management company's tax return for 2019.

22 Is it a true and correct copy,

23 sir?

24 (The above described document was

25 marked Exhibit 5 for identification as of

- Lichtenstein MC, p. 57, ll. 4-12 (video)

Page 57

1 MICHAEL LICHTENSTEIN

2 this date.)

3 A It seems like it is.

4 Q And again, if I ask you any

5 questions about this return, you are not going

6 to answer them, is that correct?

7 A I will not be answering specific

8 questions about these tax returns that are not

9 related to the Debtor or that I -- or that are

10 related to tax matters of classifications or

11 such matters where I would rely on my

12 accountant.

13 You can ask the question and

14 either I'll answer or I won't answer.

15 Q Here is a question.

16 Line item 1A on the second page

17 shows gross receipts of \$20,034,954, and if you

18 flip back to the bankruptcy schedules, for

19 2019, the Debtor reflects gross revenues of the

20 same exact amount.

21 How is that -- how can that be,

22 sir?

23 A As I said, these are two

24 different forms, two different questions.

25 So I'm not really understanding

- Lichtenstein MC, p. 58, l. 20 through p. 59, l. 6 (no video)

Page 58

1 MICHAEL LICHTENSTEIN

2 your question and I will not respond any
3 further on this.

4 Q If the management company is a
5 pass-through entity, receiving the -- taking in
6 the receipts from the hotel and paying
7 expenses, how is the management company
8 claiming ordinary business income of \$94,698
9 for 2019?

10 A The management company is not
11 claiming generally any income from the hotel
12 revenues and, if anything, it is transferring
13 that to the Debtor, which is on the last page,
14 which we went through last time, where we chose
15 I think for this year \$1.5 million, or I don't
16 know, some large sum that was transferred to
17 the Debtor.

18 We went through this actually in
19 the last deposition, so --

20 Q My question is, though, sir, how
21 is the management company claiming that it had
22 income of \$94,698 in 2019?

23 MR. KELLEY: If you know. I
24 don't think he's asking you to formulate
25 a legal conclusion, but if you know, go

Page 59

MICHAEL LICHTENSTEIN

ahead and answer.

A I think that the question the way it's asked is not a correct question, and I will not respond on tax matters and tax classifications without my accountant.

Q And this return is dated May 4, 2021, and the first page shows it was filed on May 26, 2021.

Do you see that, sir?

A Could be.

Q Do you see it, sir?

A Okay, I'm not --

Q So why did the management company file its 2019 return in May 2021, but filed its 2018 return in February of 2022?

A I don't remember now the timing when the tax returns were filed.

Q You will have up in a moment Exhibit 6. Let me know when you have it.

(The above described document was marked Exhibit 6 for identification as of this date.)

A Exhibit number 6?

Q Yes, sir.

- Lichtenstein MC, p. 97, l. 20 through p. 98, l. 13 (no video)

Page 97

1 MICHAEL LICHTENSTEIN

2 of funds for the management company to pay back

3 the \$824,000 under the settlement on the PPP

4 loan if the Debtor's plan is not confirmed?

5 MR. GLUCKSMAN: Objection.

6 THE WITNESS: Go ahead, James.

7 MR. GLUCKSMAN: I object on the

8 ground it's a hypothetical question.

9 MR. FREEDMAN: No, it not

10 hypothetical. It's in the plan, sir.

11 Q Please answer the question,

12 Mr. Lichtenstein.

13 A I already responded to that

14 question. We had that conversation already in

15 the previous deposition.

16 Q Are you refusing to answer it

17 now?

18 A I said I already responded at

19 length about this matter, and in summary --

20 Q If you can just respond to it

21 now so I can move on?

22 A Yes, if you would stop

23 interrupting my answer I would be able to

24 answer it.

25 Q Please stop yelling at me, sir.

Page 98

1
2

MICHAEL LICHTENSTEIN

3

A And I did not yell at you, for
the record.

4

Q Yes, you did. You're raising
our voice.

5

A If you stop interrupting my
answers I can finish my answers without
interrupting.

6

Q Sir, what's the source of funds,
sir?

7

A And I responded already that
it's an irrelevant question because our plan is
going to be confirmed.

8

9

Q If it's not confirmed what's the
source of funds?

10

11

A We already dealt with that
question at length in the last deposition.

12

13

Q You are refusing to answer the
question, then?

14

15

A No, I am not refusing to answer
the question. I already answered that question
at length in the previous deposition.

16

17

18

Q How long have you been a
developer?

19

20

A I don't know, about 20 years.

21

22

4. Goldwasser

- Goldwasser, p. 106, ll. 5-12 (no video)

Page 106

1 DAVID GOLDWASSER

2 A Counsel.

3 Q Just you and counsel?

4 A Yes, sir.

5 Q You never had a discussion with

6 the Debtor about the PPP stipulation?

7 MS. PARLOVECCHIO: Objection.

8 A Who are you saying the Debtor

9 is, who is the Debtor?

10 Q 96 Wythe Acquisition LLC.

11 A I did not have a conversation

12 with a piece of paper, no.

13 Q I don't understand your answer.

14 A piece of paper, what are you talking about,

15 sir?

16 A 96 Wythe Acquisition LLC is a

17 name on a piece of paper.

18 Q It is also owned by two people,

19 right?

20 A I asked you who. You said the

21 Debtor. You didn't say the equity holders.

22 Q Really? That's the game we are

23 going to play, you are going to tell me you

24 didn't have a conversation with a piece of

25 paper and you don't think that's a flippant

- Goldwasser, p. 111, l. 5 through p. 115, l. 18 (no video)

Page 111

1 DAVID GOLDWASSER

2 the decision to move forward with the PPP

3 matter, both in resolution and in stipulation.

4 Nothing more, nothing less.

5 Q How did you decide to accept

6 \$1,438,000 approximately from the management

7 company, if the plan is confirmed, but only

8 \$824,000 from the management company if the

9 plan is not confirmed?

10 MS. PARLOVECCHIO: Objection, to

11 the extent it calls for conversations

12 with counsel.

13 A There were many conversations

14 with counsel. If you ask my belief, this is

15 all a sham and a side show. The PPP had

16 nothing to do with the hotel.

17 I can give you my subjective

18 analysis. It was calculations made with

19 counsel on for or against confirmation and why

20 those numbers came about.

21 I am not going to disclose them

22 on the record here.

23 Q To your knowledge, did the

24 management company have any other business

25 other than managing the hotel?

DAVID GOLDWASSER

1
2 A I think you are going to have to
3 ask them.

4 Q I'm asking you what your
5 knowledge is, sir.

6 A I don't integrate with the
7 management company on a day-to-day basis, on
8 anything other than this hotel.

9 I cannot give you an opinion on
10 what I think.

11 Q I am asking you what your
12 understanding is. Can you at least tell me
13 what your understanding is?

14 A I understand I deal with them on
15 this hotel and only on this hotel. I have no
16 other dealings with them.

17 Q So, you haven't answered my
18 question.

19 How did you determine that
20 payment by the management company of \$1,438,000
21 is fair under the PPP stipulation if the plan
22 is confirmed, but only \$824,000 if the plan is
23 not confirmed?

24 MS. PARLOVECCHIO: Objection,
25 Gary, he's testified that these

DAVID GOLDWASSER

1
2 conversations happened with counsel, so
3 now your question is calling for
4 communications with counsel.

5 MR. FREEDMAN: No, I am asking
6 him how he determined as a fiduciary and
7 the CRO of the Debtor, who is advancing
8 these settlements, that's who I'm
9 asking, counsel.

10 Are you telling me I'm not entitled
11 to know that?

12 MS. PARLOVECCHIO: I'm objecting
13 to the extent it involves conversations
14 with counsel, which he testified it did.

15 MR. FREEDMAN: He also had --

16 MS. PARLOVECCHIO: The
17 conversations that did not happen with
18 counsel, then he can answer, but I am
19 entitled to make my record.

20 MR. FREEDMAN: I didn't ask for
21 conversations, I'm asking what he -- how
22 he determined that a \$600,000 discount
23 was appropriate if the plan isn't
24 confirmed.

25 Q So, sir, the question is

DAVID GOLDWASSER

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pending.

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A I had discussions with counsel based upon items within, as was stated, privilege, based upon where we thought the case would be going or not be going.

And I do not believe there should have been any settlement, there was no harm to anybody, there was no nothing, it's a side show, and I think this is all one big piece of baloney.

So I think the fact that we agreed to give some money or demand money back if the case was not confirmed was a gift to the estate and not a burden on the estate.

So, that's my testimony.

Q So, when you are required to give testimony at confirmation with respect to the four prongs to ask Judge Drain to approve this settlement, you are not going to testify to anything more than you just testified to?

You are not going to give any other reasons?

MS. PARLOVECCHIO: Objection.

A You will see what happens at the

Page 115

DAVID GOLDWASSER

1
2 confirmation.

3 Q Well, I am entitled to know now,
4 sir. You can't hide behind the attorney-client
5 privilege today and then give fulsome testimony
6 as the basis for this settlement at
7 confirmation.

8 So, this isn't hide and seek. I
9 want to know now why you determined that that
10 was an appropriate settlement at confirmation,
11 an appropriate settlement if the plan isn't
12 confirmed?

13 MS. PARLOVECCHIO: Objection.

14 Q Are you thinking, or you are
15 just not going to respond? I just want to know
16 so I can move on.

17 A You can move on. I'm not
18 responding.

19 Q Okay.
20 And just for the record, if you
21 try to give testimony on this issue at
22 confirmation we are going to strike your
23 testimony.

24 What due diligence did you do to
25 determine that the management company would

III. **Omissions on Schedules and Disclosure Statement**

a. **Exhibits**

- BSP EXHIBIT 56 - Schedules of Assets and Liabilities and Statement of Financial Affairs - Reporting Period 04/01/2021 - 04/30/2021 [ECF No. 31]
- JOINT EXHIBIT 30 - Amended Schedule E/F: Creditors Who Have Unsecured Claims [ECF No. 205]
- BSP EXHIBIT 117 - Amended Schedule D: Creditors Who Have Claims Secured by Property [ECF No. 411]
- JOINT EXHIBIT 1 – Line of Credit Agreement and Note - Toby Moskovits and Y. Michael Lichtenstein, Lenders; 96 Wythe Acquisition, LLC, Borrower
- JOINT EXHIBIT 6 – First Amendment to Line of Credit Agreement and Note - Toby Moskovits and Y. Michael Lichtenstein, Lenders; 96 Wythe Acquisition, LLC, Borrower
- JOINT EXHIBIT 7 - Hotel Management and Services Agreement between 96 Wythe Acquisition LLC and The Williamsburg Hotel BK LLC
- DEBTOR'S EXHIBIT 22 (former 42) – Equity and Loans Report (also found in BSP Exhibit 129 - Goldwasser Transcript as Deposition Exhibit 6)

b. Testimony

1. Goldwasser

- Goldwasser p. 62, l. 11 through p. 64, l. 24 (video - p. 62, l. 16 through p. 63, l. 8 and p. 63, l. 22 through p. 64, l. 24 only)

Page 62

1 DAVID GOLDWASSER

2 responsibilities at the management company; we

3 do interact with him from time to time, but

4 more generally, Mr. Rauch.

5 Q You should have before you


6 Exhibit number 3, which is a set of the

7 Debtor's bankruptcy schedules and statement of

8 financial affairs.

9 Let me know when you have it,

10 please.

11  (The above described document was

12 marked Exhibit 3 for identification as of

13 this date.)

14 A Yes.

15 I have it in front of me, sir.

16 Q Do you recognize this document?

17 And for the record, it bears docket entry 31.

18 A It does look familiar, yes.

19 Q Would you agree with me that

20 these are the bankruptcy schedules and

21 statement of financial affairs filed on behalf

22 of the Debtor in this case?

23 A Looks as such, yes, sir.

24 Q And if you look, and I'm looking

25 at the numbers on the top, page 32 of 33, it

Page 63

DAVID GOLDWASSER

indicates that you signed exhibit number 3 on May 5, 2021?

A Yes, I see the conformed signature, yes.

Q And did you actually physically sign the original copy of these schedules?

A I believe I did, yes.

Q And do you know where that wet signature document is today?

A I'm sorry?

Q Do you know where that wet signature document is today?

A I generally e-sign my documents, and then we send them over to counsel and they file conforming signatures.

Q So you may not have actually signed it, it may just be an electronic signature?

MS. PARLOVECCHIO: Objection.

A I sign on the screen, but yes.

Q And you understood that when you were signing these schedules, that you were verifying that the information was true and correct?

1

DAVID GOLDWASSER

2

A

3

I verified the information was true and correct to the best of my knowledge, and these statements many times get amended because information is not always perfect.

6

7

8

9

10

11

12

13

The gathering of information is not always perfect, and especially when it is not coming directly from you, you know, sometimes people do not give you everything or give you too much or give you the wrong thing.

So you always have the ability to amend schedules when things are not exactly perfect.

14

Q

15

And in fact, you've had to amend these schedules twice, is that right?

16

A

17

Q

18

A

19

Q

20

21

22

23

24

25

I believe so, yes.

To add creditors, correct?

To add, I think we took off one.

And the schedules as amended today, to the best of your knowledge, are they true and correct?

I believe that that's the true and correct copy as we have gone through everything over the period of time, yes.

Q If you flip to page 13 of 33,

- Goldwasser, p. 69, l. 11 through p. 70, l. 10 (video)

Page 69

1 DAVID GOLDWASSER

2 highlights of question within the examiner

3 report, but they never felt of putting a claim,

4 per se, against the -- against the entity that

5 owned the hotel.

6 They definitely have made

7 statements that they lent money to the hotel or

8 they, you know, in order to keep it afloat.

9 But never that they wanted to

10 put a claim on their own hotel.

11 Q When you were gathering this

12 information pursuant to the checklist that you

13 provided --

14 A Um-hum.

15 Q -- were you ever provided any

16 documentation that evidenced loans that Ms.

17 Moskovits and Mr. Lichtenstein made to the

18 Debtor?

19 A That was not a focus that we

20 had.

21 Could there be something? There

22 could.

23 Q The question simply was did they

24 provide you anything?

25 A I don't know, sitting here right

Page 70

DAVID GOLDWASSER

1
2

now I don't know.

3

Q Do you recall seeing anything?

4

A I do not recall seeing anything,

5

but that doesn't mean there wasn't.

6

Q Do you recall Ms. Moskovits and

7

Mr. Lichtenstein ever providing you a copy of

8

any loan agreement between them and the Debtor?

9

A I do not recall seeing that,

10

sir.

11

Q And flipping to page 22 of 33 --

12

22 of 33?.

13

A Give me a second. It's one by

14

one, it doesn't have like a click. Yes, I am

15

on that page.

16

Q Schedule G, executory contracts

17

and unexpired leases. Are you there?

18

A Yes.

19

Q And you checked off no.

20

Do you see that?

21

A Yes.

22

Q And no executory contracts or

23

unexpired leases were referenced in the

24

schedule, correct?

25

A At that point they weren't,

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- Goldwasser, p. 70, ll. 16-21 (video)

Page 70

1 DAVID GOLDWASSER

2 now I don't know.

3 Q Do you recall seeing anything?

4 A I do not recall seeing anything,

5 but that doesn't mean there wasn't.

6 Q Do you recall Ms. Moskovits and

7 Mr. Lichtenstein ever providing you a copy of

8 any loan agreement between them and the Debtor?

9 A I do not recall seeing that,

10 sir.

11 Q And flipping to page 22 of 33 --

12 22 of 33?.

13 A Give me a second. It's one by

14 one, it doesn't have like a click. Yes, I am

15 on that page.

16 Q Schedule G, executory contracts

17 and unexpired leases. Are you there?

18 A Yes.

19 Q And you checked off no.

20 Do you see that?

21 A Yes.

22 Q And no executory contracts or

23 unexpired leases were referenced in the

24 schedule, correct?

25 A At that point they weren't,

- Goldwasser, p. 72, l. 5 through p. 73, l. 7 (video)

Page 72

1 DAVID GOLDWASSER

2 management agreement between the Debtor and the

3 management company?

4 A Yes.

5 Q So, at least as of May 5, when

6 you signed these schedules, nobody had provided

7 you with a copy of that management agreement.

8 Is that fair?

9 MS. PARLOVECCHIO: Objection.

10 A That's correct, otherwise we

11 would have put it on.

12 Q And when were you first advised

13 of the existence of a management agreement

14 between the Debtor and the management company?

15 A I do not have a date that I can

16 give you.

17 I just don't have a date I can

18 give you.

19 Q Did someone eventually provide

20 you a copy of a management agreement between

21 the Debtor and the management company?

22 A We did get to get a copy of the

23 management agreement during the case, I don't

24 remember exactly when.

25 Q And who provided you that?

Page 73

DAVID GOLDWASSER

1
2

A Specifically, I don't remember,
it would have either been -- it would have
either been to -- at that point I think Mark
Frankel was the attorney, and I don't know who
it would have come from, but I believe he and I
received it simultaneously.

8 Q So, when you prepared and signed
9 these bankruptcy schedules back in May 5, 2021,
10 you understood that the management company was
11 managing the hotel, right?

12 A Yes.

13 Q And did you ask anyone at that
14 point in time whether there was a written
15 agreement for the management of the hotel
16 between the management company and the hotel,
17 and the Debtor, that is?

18 MS. PARLOVECCHIO: Objection.

19 A As I look at the document, I
20 don't know why it's not on here.

21 I believe there was -- I did
22 understand that there was a management
23 agreement, but to my knowledge it wasn't --
24 well, I don't know why it's not on here.

25 I don't remember specifically

- Goldwasser, p. 73, l. 8 through p. 74, l. 18 (video)

Page 73

1 DAVID GOLDWASSER

2 A Specifically, I don't remember,

3 it would have either been -- it would have

4 either been to -- at that point I think Mark

5 Frankel was the attorney, and I don't know who

6 it would have come from, but I believe he and I

7 received it simultaneously.

8 Q So, when you prepared and signed

9 these bankruptcy schedules back in May 5, 2021,

10 you understood that the management company was

11 managing the hotel, right?

12 A Yes.

13 Q And did you ask anyone at that

14 point in time whether there was a written

15 agreement for the management of the hotel

16 between the management company and the hotel,

17 and the Debtor, that is?

18 MS. PARLOVECCHIO: Objection.

19 A As I look at the document, I

20 don't know why it's not on here.

21 I believe there was -- I did

22 understand that there was a management

23 agreement, but to my knowledge it wasn't --

24 well, I don't know why it's not on here.

25 I don't remember specifically

Page 74

DAVID GOLDWASSER

1
2 then what I asked or didn't ask at that point
3 in time.

4 But it's a very good point that
5 it's not on here, and it should have been here.

6 Q And the bankruptcy schedules
7 have never been amended to include the
8 management agreement, correct?

9 A I think that's been a bone of
10 contention between the lender and the Debtor
11 and the management company for a period of
12 time, of which they are claiming that's not a
13 valid management agreement, and there has been
14 a dispute over this agreement.

15 Q Do you still have my question in
16 mind, which was simply --

17 A I don't believe that we amended
18 it, that's correct.

19 Q And who designated you as the
20 representative of the Debtor to appear on its
21 behalf at the meeting of creditors on March 18,
22 2021?

23 A Who designated -- I think in the
24 original resolution that was filed that was
25 signed by Mr. Lichtenstein and Ms. Moskovits,

- Goldwasser, p. 75, l. 10 through p. 77, l. 9 (video - p. 75, ll. 10-15; p. 75, l. 20 through p. 77, l. 9 only)

Page 75

1 DAVID GOLDWASSER

2 they designated me to act on their behalf in

3 the capacity of CRO, which I have appeared at

4 many 341 meetings for this capacity.

5 I don't -- it's been a general

6 practice that I go to the 341 meetings. As of

7 late, we have been changing that, but that's a

8 general practice, especially in a larger case

9 where there is a lot of moving parts.

10 Q Going back to Exhibit 3, the

11 bankruptcy schedules.

12 A Yes, sir.

13 Q If you look at, let's start on

14 page 24 of 33.

15 A Okay.

16 Q Let me know when you are there.

17 A I'm not used to this system,

18 hold on.

19 Yes, sir.

20 Q If you look at the bottom of

21 page item 4.

22 A Um-hum.

23 Q Payments or other transfers of

24 property made within one year before filing

25 this case that benefited any insider.



1

DAVID GOLDWASSER

2

Says, lists payments or

3

transfers, including expense reimbursements

4

made within one year before the filing of this

5

case on debts owed to insiders or guaranteed or

6

co-signed by insiders unless aggregate value is

7

less than, let's call it \$7,000.

8

So you check off none there,

9

right?

10

A That is checked off none. We

11

didn't have the time to go through every

12

detail.

13

Each case is a little different,

14

some are very clean and some are not very

15

clean, with all of their records.

16

So this was not something we

17

could get to in any fell swoop in a short

18

amount of time.

19

There is not a box for other.

20

Q Has item 4 of the statement of

21

financial affairs been amended?

22

A The truth is I don't remember.

23

Q Let me ask it differently.

24

Has item 4 of the statement of

25

financial affairs been amended to reflect

Page 77

DAVID GOLDWASSER

1
2 payments made to Ms. Moskovits,
3 Mr. Lichtenstein or any of their affiliated
4 entities within a year of the bankruptcy
5 filing?

6 A I don't believe it has, as there
7 were more inflows than outflows, and the
8 reconciliation which obviously, as we know, is
9 part and parcel to the examiner report.

10 Q There is nothing in item 4 that
11 talks about reconciliation. It just asks
12 you --

13 A Hold on. You are asking a
14 question. I'm answering your question with,
15 actuality, not with trying to give you a bum
16 answer.

17 If you want a bum answer, I'll
18 say they didn't take anything. So I'm not
19 trying to give you a bum answer.

20 I have had this in many other
21 cases where we do use reconciliation to get to
22 the bottom line of what was actually
23 transferred in and what was transferred out.

24 So it just depends on the
25 specific case.

- Goldwasser, p. 79, ll. 3-18 (video)

Page 79

1 DAVID GOLDWASSER

2 of what you're trying to ask.

3 Q I am just trying to understand,

4 sir, did you actually undertake that analysis

5 to see whether any money went directly from the

6 Debtor to Moskovits or Lichtenstein or any

7 company which they are affiliated with within a

8 year of the bankruptcy filing?

9 A The answer is within the year of

10 the bankruptcy filing there was a receiver, and

11 there was nothing to look for specifically from

12 the Debtor going to them directly, because

13 everything was covered under the receiver

14 reports that we were given.

15 And that's where we ascertained

16 that there was nothing to show that they got,

17 because the receiver was in charge of all of

18 the money for the past year.

19 Q So you relied upon the

20 receiver's reports, is that fair?

21 A Yes, for this specific question.

22 THE WITNESS: Is it possible to

23 take a bathroom break in the next five

24 or ten minutes?

25 MR. FREEDMAN: Lets' do it now.

- Goldwasser, p. 83, l. 16 through p. 87, l. 14 (video – p. 83, l. 25 through p. 84, l. 16 and 85, l. 3 through p. 87, l. 13 only)

Page 83

1 DAVID GOLDWASSER

2 equity, and I don't know that there will be any

3 additional benefit, because a class of

4 creditors doesn't really affect much.

5 So I would assume that's why

6 they specifically, or not specifically, but

7 generally just didn't add it in.

8 They have always maintained and

9 I think I stated it on the record earlier they

10 lent money into the hotel.

11 Q My specific question to you was,

12 sir, and I ask that you listen to my specific

13 question and try to answer it.

14 A Please, absolutely.

15 Q That would be helpful.

16 Did they ever tell you that on

17 the date of filing that the Debtor owed them

18 approximately \$6 million?

19 A I think they stated a number

20 more than \$6 million.

21 I believe it's always been more

22 than \$6 million, as per our discussions, but

23 not to be listed, not that they asked to be

24 listed on the creditor list.

25 Q Isn't it your obligation to

DAVID GOLDWASSER

1 provide creditors true and correct information
2 on the bankruptcy schedules?

3 A Yes.

4 Q And if the Debtor owes Ms.
5 Moskovits and Mr. Lichtenstein or their
6 companies any money, it's your obligation as
7 CRO when you signed those schedules, under the
8 threat of perjury, to list those obligations,
9 correct?

10 A Yes.

11 Q But in this instance you decided
12 not to list them, correct?

13 A I didn't have evidence of them
14 being given and we did not list them on the
15 schedules.

16 Q Now, going back to the statement
17 of financial affairs, item number 4. You have
18 indicated that if the Debtor owed Ms. Moskovits
19 or Mr. Lichtenstein or the companies more than
20 what they received from the Debtor within the
21 year, you would reconcile those numbers and not
22 list the transfers.

23 Do I have that correct?

24 MS. PARLOVECCHIO: Objection.
25




1 DAVID GOLDWASSER


2 A I did not say that.

3 Q So, tell me, sir, what analysis
4 did you undertake to determine whether or not
5 insiders received transfers from the Debtor
6 within one year of the bankruptcy filing?


7 A I stated clearly on the record
8 that the receiver was in possession of the
9 property for the year prior to the filing, and
10 no disbursements were made to the persons for
11 that year.

12  I gave an example for context as
13 far as the other reference you made.

14 But when I answered you with
15 specificity, it was directly that the receiver
16 report showed no money going directly to
17 Mr. Lichtenstein or Mrs. Moskovits.

18  Q We are going to pull up exhibit
19 number 6.

20 (The above described document was
21 marked Exhibit 6 for identification as of
22 this date.)

23  Q So Exhibit 6 was provided to us
24 last week. It bears Bates stamp Williamsburg
25 Hotel supplemental production 28, entitled "96

Page 86

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DAVID GOLDWASSER



Wythe Acquisition Equity and Loans Report."

Do you have it up, sir?

A I am looking at it, sir.

Q So if you look at the first box,
it shows owners loans-repayment from 96 Wythe
in the year 2020/21.

A Um-hum.

Q They received a total of
\$102,610, correct?

That's what the report shows?

A That's what the report shows.

Q How do you know as you sit here
today as the Debtor's CRO that none of those
monies were received within a year of the
bankruptcy filing, which was February 23, 2021?

A If you would like to show me a
specific document to show that versus the
payment that has reconciliations, I'm more than
happy to discuss each one.

Q This is what the Debtor provided
to us last week.

A Okay, so it's a reconciliation
that was done last week. So if you want to
show me the backup as to how the

1 DAVID GOLDWASSER

2 reconciliation, I'm more than happy to answer
3 your question.

4 Q Did you ever do a reconciliation
5 like this?

6 A You're showing me something they
7 did last week, and no, I didn't do this a year
8 and a half ago, when the case was filed.

9 Q Had you ever seen this document
10 before?

11 A You are showing it to me now.

12 Q Had you ever seen it before now?

13 A I did not see it before now.
14 You just showed it to me now.

15 Q I want to go back to your
16 authority. Is it your understanding that you
17 have the authority to make any definitive
18 decisions on behalf of the Debtor?

19 MS. PARLOVECCHIO: Objection.

20 A It's not my understanding I have
21 the definitive authority to make any decision
22 for the Debtor, no.

23 Q All ultimate decisions are still
24 within the discretion of Ms. Moskovits and
25 Mr. Lichtenstein, is that correct?

- Goldwasser, p. 89, l. 19 through p. 90, l. 16 (video)

Page 89

1 DAVID GOLDWASSER

2 A No, I did not say that, sir, but

3 it a good try to recharacterize what I said.

4 Q I'm not trying to do anything,

5 sir, I'm just trying to listen to your

6 testimony.

7 So let's go back, and I will

8 actually take a look at what you just testified

9 to.

10 So, just to be clear, do you

11 have ultimate authority to make decisions with

12 respect to the reorganization or restructuring

13 of the Debtor?

14 A Ultimate --

15 MS. PARLOVECCHIO: Objection.

16 THE WITNESS: I'm sorry.

17 A I do not have authority to make

18 ultimate decisions to the Debtor.

19 Q Let me ask you, if Moskovits and

20 Lichtenstein have a \$6 million claim in the

21 bankruptcy case, that would be, what, the third

22 largest claim against the bankruptcy estate?

23 A Okay.

24 Q And is it your practice in your

25 50 cases where you've been CRO to just omit the



1

DAVID GOLDWASSER

2

third largest claim in the case?

3

A

4

My practice as CRO, I've never seen equity loans that have any credence to equity, so it's a non-event in the case.

6

7

If you want to say it was an omission and I have a black mark as a CRO, you can say that.

9

10

It has no effect on the case.

11

12

13

14

15

16

Insider debt never has any effect on the case. It's meant for statement, and it pretty much in itself, they are not going to get any treatment, they are not going to get any money, they are not going to get anything, so in my practice of what actually happens, zero.

17

18

19

Q So it's your understanding that that loan, if scheduled, would just be treated as equity and --

20

21

22

23

24

25

A It would be one level below equity, but it would have no credence, because it's an insider claim, and all the other claims would have precedence. It becomes a subordinated class.

Q

Below equity?

IV. **Tax Evasion**

a. **Exhibits**

- BSP Exhibit 119 – Report of Examiner, Eric M. Huebscher [ECF No. 418]
- BSP Exhibit 130 – Report of Examiner, Eric M. Huebscher [ECF No. 465]
- JOINT EXHIBIT 39 – Debtor IRS Form 1065 – 2017 dated 2/24/2022
- JOINT EXHIBIT 45 – Debtor IRS Form 1065 – 2018 dated 2/24/2022
- JOINT EXHIBIT 48 – Debtor IRS Form 1065 – 2019 dated 2/24/2022
- JOINT EXHIBIT 22 – Debtor IRS Form 1065 – 2020 dated 9/13/2021
- JOINT EXHIBIT 49 – Debtor IRS Form 1065 – 2020 (amended) dated 2/24/2022
- JOINT EXHIBIT 42 – TWH IRS Form 1065 – 2017 dated 2/24/2022
- BSP EXHIBIT 45 – TWH IRS Form 1065 – 2018 dated 2/24/2021
- JOINT EXHIBIT 51 – TWH IRS Form 1065 – 2018 dated 2/24/2022
- BSP EXHIBIT 46 – TWH IRS Form 1065 – 2019 dated 2/24/2021
- BSP EXHIBIT 55 – TWH IRS Form 1065 - 2019 dated 5/4/2021
- JOINT EXHIBIT 50 – TWH IRS Form 1065 – 2020 dated 2/24/2022
- BSP EXHIBIT 56 – BKC Schedules ECF 31
- BSP EXHIBIT 29 - Notice of Filing Amended Disclosure Statement (Third Amended Disclosure Statement and Plan) [ECF No. 196]
- BSP EXHIBIT 61 - Proof of Claim #10-1 filed by NYC Department of Finance
- BSP EXHIBIT 62 - Proof of Claim #11-1 filed by NYC Department of Finance (Administrative)
- BSP EXHIBIT 84 - Proof of Claim #14-1 filed by NYC Department of Finance
- BSP EXHIBIT 85 - Proof of Claim #18-1 filed by NYC Department of Finance

- BSP EXHIBIT 97 - NYC Department of Finance's Response in Opposition to Debtor's Objection to Proofs of Claim Nos. 10 and 11 [ECF No. 328]
- BSP EXHIBIT 123 – Transcript and Video of Videotaped Deposition of Toby Moskovits Volume I taken on 3/4/2022
- BSP EXHIBIT 137 – Transcript and Video of Videotaped Deposition of Toby Moskovits Volume II taken on 4/1/2022
- BSP EXHIBIT 74 – Transcript - Deposition Via Zoom of Michael Lichtenstein, Esq. taken on 10/1/2021
- BSP EXHIBIT 125 – Transcript and Video of Zoom Videoconference - Videotaped Deposition Michael Lichtenstein, Esq. taken on 3/10/2022
- BSP EXHIBIT 132 – Transcript and Video of Zoom Videoconference - Videotaped Deposition Michael Lichtenstein, Esq. taken on 3/23/2022
- BSP EXHIBIT 135 – Transcript and Video of Zoom Videoconference - Videotaped Deposition Michael Lichtenstein, Esq. taken on 3/29//2022

b. Testimony

1. Lichtenstein

- Lichtenstein p. 231, l. 22 through p. 237, l. 16 (video - p. 231, l. 22 through p. 232, l. 4; p. 232, ll. 21-25; p. 235, ll. 22-24 and p. 236, l. 4 through p. 237, l. 16 only)

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1 M. LICHTENSTEIN

2 2017, 2018 -- let me ask it differently.

3 We have copies of returns for 2017,

4 2018, 2019, and 2020.

5 Were they all filed, all four returns,

6 sir?

7 A. Yes.

8 Q. And they're all dated, I believe,

9 February 24, 2022.

10 Why did the debtor file all four

11 returns --

12 MR. FREEDMAN: Let me strike and say it

13 differently.

14 Q. Why didn't the debtor file these returns

15 timely?

16 MR. KELLEY: Objection to the form.

17 You may answer.

18 A. I'm not sure what the word "timely"

19 means.

20 Q. All right. Forget it. I will ask a

21 different question.

22 Why did the debtor prepare and

23 presumably file its 2017 return not until February

24 24, 2022?

25 A. Because it didn't need to be filed until

M. LICHTENSTEIN

1
2 stabilization. And now as part of emerging from
3 bankruptcy, the asset will be stabilized, and so we
4 filed the returns.

5 Q. Who told you that it didn't need to be
6 filed until stabilization?

7 MR. KELLEY: Out of a cautionary -- if
8 it involves speaking with some counsel
9 somewhere -- and I don't know if it does or
10 doesn't. You will know that. He's not
11 asking you to reveal privilege or the source
12 of that, and you shouldn't be talking about
13 the substance of any communication you may
14 have had with legal counsel.

15 I don't know that that's involved, but
16 that's just a reminder. So other than --
17 outside of referring to any legal counsel,
18 can you respond to Mr. Freedman's question,
19 answer the question?

20 A. I think I responded enough.

21 Q. So someone told you back in 2018 that the
22 debtor was not required to file its 2017 US return
23 until the hotel was stabilized?

24 Do I have that correct?

25 A. You could say that, yes.

Page 233

M. LICHTENSTEIN

1
2 Q. And it's your testimony that that advice
3 came from an attorney?

4 A. It is my testimony that I am not going to
5 share with you details about this conversation as
6 it's privileged, and that's it.

7 Q. My question is: Did that advice come
8 from an attorney?

9 MR. KELLEY: I think he's saying that
10 anything reveals communications with counsel,
11 and on that basis, I have to assert that he
12 should not respond to something that seeks
13 communications with counsel.

14 MR. FREEDMAN: Well, if it didn't come
15 from an attorney, I'm entitled to inquire.
16 I'm just trying to determine whether it's --
17 whether he can't answer the question because
18 the advice came from an attorney.

19 How else am I going to voir dire the
20 witness?

21 MR. KELLEY: I'm not going to paint for
22 you a picture, but all I can say is if the
23 witness -- the witness is instructed not to
24 provide substance of communications with
25 counsel.

M. LICHTENSTEIN

And I'm not sure which counsel would have been involved in the time frame, but I'm just saying I have to preserve the company's privilege at this point in time it's not waiving.

MR. FREEDMAN: Well, that's a great, so let me ask it differently.

Q. What counsel did the debtor have engaged in 2017, 2018 with respect to tax advice?

A. I think this entire conversation is privileged, and I am not going to have this discussion with you other than saying that all taxes have been filed. There are no tax liabilities, and that is all that matters at the end of day.

Q. So you're refusing to answer the question?

MR. KELLEY: I think he's refusing because he's following my instructions that to do so would reveal communications with counsel is my interpretation of his answer.

If that's the case, then I would instruct the witness not to respond if it's going to reveal privileged communication.

MR. FREEDMAN: Asking what counsel the

M. LICHTENSTEIN

debtor had for tax advice at relevant periods of time is not asking for privileged communications, just as an engagement letter is not privileged. Typically invoices and bills are not privileged. It falls within the same parameters.

But if that's the advice you're going to give the witness --

MR. KELLEY: Without knowing more about the response, all I can do is react to what the witness said.

MR. FREEDMAN: Do you want to take a moment to speak with him?

MR. KELLEY: We'll talk at the next break.

MR. FREEDMAN: So let's put up 2017 ad Exhibit 13, please.

(Whereupon, Form 1065 for 2017 was marked as Lichtenstein Exhibit 13 for identification, as of this date.)

Q. You should have up in a moment Exhibit 13, which is the Form 1065, return for the debtor, dated the 2017 year.

Let me know when you have it, sir.

M. LICHTENSTEIN

A. (No verbal response given.)

Q. Do you have it, sir.

A. Which exhibit?

Q. 13, sir.

A. Yes.

Q. This is the debtor's 2017 return?

A. I don't know.

Q. If you don't know, who would know?

A. I don't know what you're putting up, you know.

Q. I don't understand your --

A. Assuming that this is it, go ahead.

MR. KELLEY: Can you flip through it quickly, Mr. Lichtenstein, and tell me if it looks like the document that he's indicating it is so we can move past that.

A. Seems to be.

MR. KELLEY: Feel free to flip through the pages just to make sure it looks like what you expect it to.

MR. FREEDMAN: For the record, it bears Bates stamp Williamsburg supplemental production 8157 through 8170, indicating that this document was provided to us by the



1

M. LICHTENSTEIN

2

debtor.

3

Q. So does it appear to be a true and
4 correct copy of the 2017 return, sir?

5

A. It appears to be.

6

Q. Okay. And you recognize Ms. Moskovits'
7 signature?

8

A. Yes.

9

Q. And it looks like the return was prepared
10 on February 24, 2022?

11

A. Okay. Could be.

12

Q. That's what it shows, though, right, sir?

13

A. Seems to be, yes.

14

Q. Well, it seems to be. Doesn't it show
15 2/24/2022?

16

A. Yes.

17

Q. Great. Thanks.

18

Now, in the later returns, we have
19 electronic confirmation of the filing of the
20 return. We don't have that here.

21

Was this return electronically filed?

22

A. I don't think you could electronically
23 file in 2017.

24

Q. You mean there was no ability to
25 electronically file tax returns back in 2017? Is

- Lichtenstein p. 239, l. 1 through p. 245, l. 22 (video - p. 239, l. 20 through p. 241, l. 3 and p. 243, l. 16 through p. 245, l. 19 only)

Page 239

1
2 M. LICHTENSTEIN
3 A. I don't know which line you're reading
4 from.
5 Q. It's 1A.
6 A. Okay.
7 Q. Do you agree with me it shows zero
8 receipts there?
9 A. Seems to show zero, yes.
10 Q. So is it your testimony that the debtor
11 had zero receipts in 2017?
12 A. No. It is my testimony that the tax
13 return is prepared in the way the -- the way a tax
14 return is done, and this is what it shows here in
15 this line item.
16 Q. I don't know what that means.
17 If an entity has receipts, it's
18 supposed to be reflected on the return, no?
19 A. Yes, and everything is reflected on this
20 return. You're asking me about one line item.
21 Q. Right. And if you look at -- just look
22 at the income section, 1 through 8. The only income
23 or receipts reflected on this 2017 return is
24 \$180,000, correct?
25 A. Yes.
Q. Okay. So that was the total amount of

M. LICHTENSTEIN

1
2 receipt or income that the debtor had in 2017,
3 correct?

4 A. No. I think you don't know how to read a
5 tax return.

6 Q. Well, teach me, then. Where is the
7 reflection of --

8 A. I don't think this deposition is a lesson
9 on how to read tax returns.

10 Q. Show me, sir, where on this return it
11 reflects that the debtor had other income or
12 receipts in 2017 other than the \$180,000.

13 A. I'm not going to spend time now teaching
14 you how to read tax returns.

15 Q. You're refusing to answer the question?

16 MR. KELLEY: He's asking you to flip
17 through the document and direct him where you
18 need to direct him, if you would.

19 A. You can look at Schedule L. You can look
20 at any other pages other than the first page.

21 Q. Take me to those pages that you think
22 reflect income or receipt of funds for the debtor in
23 2017 other than the first page where it reflects
24 only \$180,000.

25 A. The tax return consists of about 20

M. LICHTENSTEIN

pages, so feel free to flip through it and go through it.

Q. I did, sir. I couldn't find anything else. That's why I'm asking you.

A. Okay. So maybe you should ask an accountant to review with you the tax return.

Q. I have, and their conclusion was no different than mine.

A. Okay.

Q. So as a debtor's representative --

A. You can have your tax expert reach out to my accountant to review.

Q. Are you refusing to answer the question, sir? This is a problem. You are here as the debtor's representative. This is a very important issue with respect to confirmation.

If you don't want to engage in these very direct questions, that's your prerogative; we'll deal with it at the appropriate time. I just want to give you fair warning that we will be dealing with this and we will be opposing confirmation because of your reluctance and failure to answer very straightforward questions which relate to income and reporting of income by

M. LICHTENSTEIN

1 the debtor.

2 MR. KELLEY: I'm going to object to the
3 sidebar.

4 But, Mr. Lichtenstein, how are you
5 feeling? Are you tired? Do you need to take
6 a break? Or do you want to proceed with
7 answering this question? How would you
8 like --

9 THE WITNESS: We can take a break if
10 the parties want.

11 MR. KELLEY: I'm fine. It's up to you.

12 THE WITNESS: I am merely saying that I
13 will not spend the next half hour reviewing a
14 tax return with Mr. Freedman. That is not
15 the purpose of this deposition.

16 A. If you want tax advice, then go and ask
17 some -- an accountant, and we can have conversations
18 with accountants by the tax returns.

19 MR. KELLEY: Mr. Lichtenstein, let's --
20 I'm just going to do this once on the record
21 and then we can take a break and talk about
22 it.

23 It's Mr. Freedman's time. He can waste
24 it any way he wants. If he wants to ask you
25

M. LICHTENSTEIN

questions about the tax documents and knows you're not a lawyer, know's you're not a CPA, he's just asking you to answer factual answers, based upon putting the return in front of you. He's entitled to ask those questions.

Can you respond to it?

THE WITNESS: He's asking me questions about the accounting and questions about how the CPA did the document and prepared the tax return, and I am not going to answer questions that should be discussed with accountants.

MR. FREEDMAN: I'll keep going.

Q. The \$180,000, and if you flip to the last page, 8170, where it says Property Fee From the Williamsburg Hotel BK, LLC.

What is that?

A. Which page?

Q. The last page of the return Bates-stamped 8170?

A. That's the money that was -- that went to the debtor from the management company.

Q. Why is it described as a property fee?

M. LICHTENSTEIN

1
2 A. Because the money went through the
3 management company and it went to the debtor. It's
4 the debtor's money. So the management company is
5 just -- the management company is just accepting the
6 money and then it transfers the money to the debtor.

7 Q. Is that the income that the management
8 company collected on behalf of the debtor for 2017?

9 A. The answer is giving -- I'm still --
10 pursuant to my previous statement that I will not
11 respond on accounting related to the -- not an
12 accounting, but on -- to the question, the answer is
13 yes.

14 Q. And if you flip to one page up, 8169.

15 A. Okay.

16 Q. You'll see at the bottom Schedule L, line
17 19A, loan from partners.

18 Do you see that?

19 A. Uh-huh.

20 Q. Is that a yes, sir?

21 A. That's a yes.

22 Q. Okay.

23 And it reflects at the beginning of the
24 year, there's no outstanding loan from partner,
25 correct?

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M. LICHTENSTEIN

1
2 A. Yes.

3 Q. And at the end of year, the loan from
4 partners is \$4,482,723?

5 A. Yes.

6 Q. And when we looked at it earlier, we saw
7 the line of credit agreement was dated June of 2016.

8 So did you and Ms. Moskovits not have
9 any outstanding loans to the debtor going into
10 2017?

11 A. Who says we didn't? I don't understand
12 your question. How does this 2017 return show that
13 there were no loans before?

14 Q. Because they would be fronted -- if there
15 were outstanding loans as of January 1, 2017, they
16 would be reflected as beginning of the year loans.
17 That's how.

18 A. I will not respond to how tax returns
19 were prepared without my accountant.

20 (Whereupon, a 2018 Tax Return was
21 marked as Lichtenstein Exhibit 14 for
22 identification, as of this date.)

23 MR. FREEDMAN: By the way, Mr. Kelley,
24 I've tried to be cordial and professional
25 with you. When you call my questioning a

- Lichtenstein p. 246, l. 17 through p. 248, l. 25 (video - p. 246, l. 17 and p. 247, l. 9 through p. 248, l. 24 only)

Page 246

1 M. LICHTENSTEIN
2 waste of time on the record, that's
3 pejorative and offensive and combative, and I
4 don't appreciate it.
5 I've let it go. I've been sitting here
6 thinking about it. You want us to be cordial
7 and move this along. Those type of comments
8 are not necessary.
9 MR. KELLEY: It wasn't really directed
10 substantively at you. I was trying to
11 explain to the client that what -- his
12 perspective of them shouldn't be a conclusion
13 as to how he responds to the questions.
14 And if that was the way you interpreted
15 my comment, that's not how I intended. So my
16 apologies.
17 Q. You have before you Exhibit 14, sir.
18 A. Were you talking to me?
19 Q. Yes, sir, Mr. Lichtenstein.
20 A. Yes.
21 Q. You have Exhibit 14 --
22 A. I didn't hear what you said. Do I have
23 what?
24 Q. Exhibit 14. Do you have it up?
25 MR. KELLEY: Can you by chance not move

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M. LICHTENSTEIN

your microphone back to where you're sitting,
because you're hard to hear right now, Mr.
Freedman.

MR. FREEDMAN: Same place that I was,
but I'll move it closer. Thanks for letting
me know.

A. Okay.

Q. This is the 1065 form for the debtor for
2018, correct?

A. Yeah.

Q. And again, this return shows no gross
receipts or sales, correct?

A. It's going to be the same response as
before.

Q. Just confirm for me, sir. It shows no
gross receipts or sales, correct?

A. No, I think that's not a true
characterization. It shows line 1A as being zero.

Q. Right. Gross receipts --

A. It's not a general statement about
income.

Q. Well --

A. You're trying to conflate the lack of a
number in line 1A as if the tax return says that

M. LICHTENSTEIN

there was no income.

Q. I never used the word "income," sir. I said the return shows no gross receipts or sales, correct?

A. That line is empty. That's all it says. Doesn't say the hotel didn't have gross receipts or sales.

Q. It doesn't reflect a number in there, right?

A. So the incomes and sales are reflected in other places in the tax return.

Q. Sir, 1A doesn't have a number in it, right?

A. 1A doesn't have a number in it. That's a fact.

Q. And the only income reflected on this tax return is \$1,450,000 on line 7, correct? Other income.

A. I will not answer to that question.

Q. What is that other income from?

A. As I said, I will not be having a discussion with you about tax returns and how they were prepared.

THE WITNESS: I have to wash my hands.

- Lichtenstein p. 250, ll. 11-24 (video)

Page 250

1 M. LICHTENSTEIN

2 could let us know how long we've been on.

3 THE COURT REPORTER: I think Bob can

4 help you out with that.

5 THE VIDEOGRAPHER: The time is 4:56.

6 We're off the record.

7 (Whereupon, there was a pause in the

8 proceeding.)

9 THE VIDEOGRAPHER: Time is 5:15. We're

10 back on the record.

11 Q. So, Mr. Lichtenstein, you indicated that

12 the debtor's tax returns for 2017, 2018, 2019, and

13 2020 were not filed when required because you were

14 waiting for the hotel to stabilize, and now these

15 returns were filed in February 2022.

16 So is the hotel now stabilized?

17 A. We'll be going towards stabilization

18 after the confirmation.

19 Q. The hotel is not yet stabilized, but

20 nevertheless, you filed these four returns; is that

21 correct?

22 A. Well, we made a profit in 2021 of about

23 \$3 million over the summer, so we're definitely

24 getting much closer to stabilization.

25 Q. By the way, when you accrued that \$3

- Lichtenstein p. 252, l. 13 through p. 256, l. 11 (video – p. 25, ll. 7-23 and p. 256, ll. 6-11 only)

Page 252

1 M. LICHTENSTEIN

2 Q. Well, I wouldn't ask the question, sir,

3 if I had it. I've been asking your counsel for it

4 for at least a week. That's why I'm asking you.

5 I'm not asking questions just to ask questions.

6 All I want to know is is there an

7 e-file confirmation for the 2018 return?

8 A. Well, I don't know if I agree with your

9 characterization that you don't just ask questions

10 for the sake of asking questions, but we can resend

11 you confirmations of filing.

12 Q. Okay. Good. Thank you.

13 So I'm going to refer to the Bates

14 stamps on the bottom again. I'm looking at the

15 page 8176, which is Schedule L.

16 A. It's actually difficult to see the Bates

17 stamps because they're overlapping, but which page

18 on the tax return are you talking about?

19 Q. 5.

20 A. Okay. Yeah.

21 Q. So it shows that the loans from the

22 beginning of 2018 to the end of 2018 went up from

23 \$4,482,723 to \$9,605,037.

24 Do you see that?

25 A. Yes.

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M. LICHTENSTEIN

1
2

Q. Line item 19A, correct?

3

A. Yes.

4

Q. The next actual entry below that is

5

Partners' capital accounts, line item 21.

6

Do you see that?

7

A. Uh-huh.

8

Q. Is that a yes, sir?

9

A. That's a yes.

10

Q. And the capital account went down from

11

twenty-one thousand, two hundred and seventy-four

12

thousand, three hundred thirty-six dollars to

13

\$11,409,750.

14

Do you see that?

15

MR. KELLEY: I think you may have

16

misspoke. You said 21,000 when you meant 21

17

million.

18

MR. FREEDMAN: Thanks. When I said it,

19

it actually dawned on me that's the way it

20

came out, so let me try again.

21

Q. \$21,274,336. And it went down to, at the

22

end of 2018, \$11,459,750.

23

Do you see that?

24

A. Yes.

25

Q. How did the partners' capital accounts

M. LICHTENSTEIN

1
2 drop over \$10 million from the beginning of 2018 to
3 the end of 2018?

4 A. So as I said, I will not be responding on
5 behalf of my accountant in detail. But overall, it
6 could have been simply depreciation or other
7 accounting reasons or mechanisms why the capital
8 account is shown as going down by this much.

9 Q. Did any of that capital account get
10 rolled into the loans? In other words, did any of
11 that capital account get recharacterized to a loan
12 during 2018?

13 A. No.

14 Q. You're sure of that?

15 A. Yes, I'm sure.

16 Q. And your only explanation, as you sit
17 here today, for the reduction of the capital account
18 is perhaps depreciation, correct?

19 A. I said that there might be a myriad of
20 explanations for how the tax returns are structured,
21 one of them which might be depreciation and other
22 explanations.

23 I will not be responding on behalf of
24 my -- of the accountant, as I said already.

25 Q. Would you flip to the last page.

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M. LICHTENSTEIN

MR. KELLEY: Page 17 of 17? Sorry.

Just to make sure we're clear.

MR. FREEDMAN: 8187 Bates stamp.

MR. KELLEY: Thank you.

A. Okay.

Q. You'll see in the middle description
Property Fee from the Williamsburg Hotel BK, LLC, of
\$1,450,000.

What is that, sir?

(Technical interruption.)

Q. Williamsburg BK, LLC.

What is that, sir?

A. That is the income that was left after
expenses that came from the management company.

Q. Why does the description called -- calls
it a property fee?

A. You can ask the accountant if you want.
If Benefit Street insists, they can rename it to a
different name.

Q. Do you know, sir?

A. It's just a random description. Just a
random description.

Q. To the IRS.

A. As I said, if Benefit Street, the lender,

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M. LICHTENSTEIN

insists, we can name it a different way.

(Whereupon, the 2019 Tax Return was

marked as Lichtenstein Exhibit 15 for

identification, as of this date.)

Q. Exhibit 15 is the 2019 return for the debtor. Let me know when you have it up, please.

A. Yup, I have it.

Q. This starts with Bates stamp 3199. Is that a true copy of the debtor's 2019 return?

A. Seems like it.

Q. Okay. And you see the first page? This is actually Acknowledgment and General Information for Entities That File Returns Electronically, and it has a return number.

Do you see that, sir?

A. Yes.

Q. Do you have a document like that for the 2018 return?

A. Well, we just looked at it together. I don't think I saw it there.

Q. I meant does the debtor have a document like that in its possession, the 2018 return?

A. I don't know. I can check. We already agreed we'll send you the proof of filing or proof

- Lichtenstein p. 257, l. 3 through 270, l. 3 (video - 257, l. 24 through p. 259, l. 14; p. 259, l. 20 through p. 261, l. 13; p. 263, ll. 11-13 and p. 263, l. 16 through p. 267, l. 17 and p. 268, ll. 2-12 and p. 268, l. 25 through p. 270, l. 3; only)

Page 257

1 M. LICHTENSTEIN

2 of mail or whatever it is.

3 Q. If you flip to the next page, that's your

4 name there on the bottom?

5 A. Yes. I see it.

6 Q. 3120. But there's no signature.

7 Did you actually sign this return?

8 A. If stuff is filed electronically, there's

9 no signature, actually.

10 Q. Did you sign a copy for your accountant?

11 A. Could be. I don't remember now. But if

12 it's filed electronically, there's no signature.

13 Q. Mine's filed electronically. I sign it.

14 A. Okay.

15 MR. KELLEY: And mine's not, so --

16 Q. And why does a 2019 return bear your

17 signature but the 2018 and 2017 returns bear Toby's

18 signature?

19 A. I don't know. I don't think there's any

20 -- I don't think there's any calculation in there.

21 Q. Any what?

22 A. I don't think there's any calculation or

23 strategy there.

24 Q. On that same page, sir, line item 15

25 shows interest, \$2,186,159.

Page 258

M. LICHTENSTEIN

1
2

Do you see that?

3

A. Which page?

4

Q. Same page, line item 15.

5

A. Okay.

6

Q. Who was that interest paid to?

7

A. Well, if it was 2019, then probably

8

Benefit Street.

9

Q. Do you know that for a fact?

10

A. I don't know that, no. As we're sitting

11

here, I don't know.

12

Q. If you flip to page 3124 --

13

A. Which page on the return?

14

Q. 5.

15

A. Okay.

16

Q. So you see that same line item 19A, Loans

17

from Partners? At the beginning of the year, the

18

loan account was \$9,605,000.37 and it went down at

19

the end of year to \$6,383,928, correct?

20

A. Yes.

21

Q. And the capital account went from

22

\$11,400- million down to \$8,800,000?

23

A. Yes.

24

Q. Do you know why the capital account went

25

down?

M. LICHTENSTEIN

1
2

A. I will -- again, I will not get into
CPA-level analysis of the tax return.

3
4

Q. My question is: Do you know why it went
down? If you don't, you don't.

5
6

A. I said I will not be responding on behalf
of my CPA. I can tell you that some of it is
depreciation. There's other accounting principles
that can be involved, and that is it.

7
8
9

Q. If you flip to Bates stamp 3137.

10
11

A. Yeah.

12
13

Q. You see description property fee from the
Williamsburg Hotel BK, LLC, \$500,000?

14
15

A. Yes.

16
17

Q. Is that the income --

18
19

A. It's freezing up. One minute. 3145?

20
21

Which page are you talking about now?

22
23

Q. 3137, sir.

24
25

A. Okay. What's your question?

26
27

Q. So I'm assuming, based upon your prior
testimony, that that's the income generated at the
hotel for 2019?

28
29

A. That's what's left. The income is filed
under -- income and expenses are filed under the
management company and this is what's left at the

M. LICHTENSTEIN

1
2

end of --

3

Q. The profit, you mean?

4

A. Yes.

5

Q. And I know when we spoke last time, you

6

agreed with me that --

7

A. I just want to correct you. I wouldn't

8

describe it as profit in terms of taxes. It's

9

income. The hotel, there is no profit here from a

10

tax perspective. But you can keep going with your

11

question. I wanted to correct that.

12

Q. Thank you for dealing with that

13

accounting question.

14

So the last time when we met, you told

15

me that 2019 was a good year for hotels, including

16

hotels in New York City, right?

17

A. Right.

18

Q. Can you explain to us why the income in

19

2018 was \$1,450,000 and why it went down to \$500,000

20

in 2019?

21

A. Because we -- because loans were repaid

22

in 2019.

23

Q. Insider loans?

24

A. Excuse me. I couldn't hear you.

25

Q. The insider loans is what you're

M. LICHTENSTEIN

1
2

referring to?

3

A. Referring to loans that are owed that
4 were repaid.

5

Q. To the insiders, you and Toby, correct?

6

A. Some of it was that.

7

Q. What else?

8

A. I have to look at the backup tax return.
9 I don't remember the exact breakdown, but it was
10 definitely some of the line of credit that was paid
11 in 2019, yes.

12

Q. Who else did the debtor repay in 2019?

13

A. I don't remember.

14

Q. So in 2019 the debtor wasn't paying his
15 real estate taxes, right?

16

A. The debtor was assuming the City of New
17 York real estate taxes, which the city was
18 overcharging the debtor by \$5 million.

19

Q. The debtor didn't pay its real estate tax
20 ins 2019, correct?

21

A. That is not correct. The debtor paid its
22 rightful real estate taxes and disputes its
23 overbilling of the real estate taxes.

24

Q. And in 2019, the debtor didn't pay its
25 corporate tax to the City of New York, correct?

M. LICHTENSTEIN

1
2 A. There was no corporate tax owed to the
3 City of New York in 2019.

4 Q. And in 2019, the debtor didn't turn over
5 the hotel occupancy tax to the City of New York,
6 correct?

7 A. That is in dispute. The debtor was
8 disputing the real estate taxes and occupancy taxes
9 with the State of New York.

10 Q. But at the same time, the debtor managed
11 to pay down you and Toby about \$3,300,000 on the
12 insider loans, right?

13 A. The debtor paid legitimate loans that it
14 owed and was disputing loans or taxes that were
15 legitimately not owed. So the debtor did what it
16 was supposed to do.

17 Q. It was being a good corporate citizen in
18 not paying its taxes, right?

19 MR. KELLEY: That's argumentative,
20 Gary.

21 Q. Is that your position, Mr. Lichtenstein?

22 A. The debtor was fulfilling its duties, and
23 it was paying whatever it needed to pay and it
24 wasn't paying what was not necessary to pay.

25 Q. In fact, sir, you, in respect to your

1 M. LICHTENSTEIN

2 various real estate development projects, have a
3 history of not paying taxes, correct?

4 A. That is flat-out wrong, but okay.

5 Q. Okay. We'll get to those documents,
6 then. We'll see how wrong that is.

7 A. Okay.

8 (Whereupon, a 2020 Tax Return was
9 marked as Lichtenstein Exhibit 16 for
10 identification, as of this date.)

11 Q. You should have Exhibit 16 in front of
12 you, sir, which is the return for 2020 for the
13 debtor.

14 Do you have it up, sir?

15 A. Okay.

16 Q. Do you have an explanation for -- and I'm
17 going to go backwards for a second, but the 2017
18 return dated 2/24/2022 has Toby's signature. The
19 same for 2018, same date.

20 The 2019 return that we just saw has
21 your name on it, and now this return has Yechial
22 Lichtenstein on it. So we have four returns all
23 dated the same date with three different
24 signatures.

25 Can you explain that for us.

M. LICHTENSTEIN

A. Actually, the electronic ones, the program spits out the signatory name. Yechial Michael Lichtenstein, that is my name. They're both my name. I'm not sure what you're alluding to or trying to say.

Q. I just want to know why four returns have three different names on them.

A. They have two name. The first two are signed by one partner and the last two are signed by the other partners.

But if you want to make a big issue of it, that's fine. You like to make big issues of issues. So it's perfectly fine. And like I said, if Benefit insists, we can amend the tax returns signed by one person.

Q. No other explanation, correct?

A. There is no explanation, no.

Q. Right?

A. It's random. That's the explanation.

Q. So if you flip to page 5, again, Schedule

L.

A. Excuse me.

Q. Page 5, please.

A. Yes.

M. LICHTENSTEIN

1
2 Q. This return shows the partner's capital
3 account going from \$8,869,000 down to \$4,819,000.

4 Do you see that?

5 A. Yes.

6 Q. Do you know why that went down?

7 A. I'm going to repeat again the same
8 answer.

9 Q. The loan account pretty much stayed the
10 same for that year?

11 A. Uh-huh. Yup.

12 Q. And there's no property fee from the
13 management company in 2020, right?

14 A. Well, there was COVID. There was no --

15 Q. Am I right?

16 A. I don't know. I'm looking at it now, but
17 I'm assuming you're right. Which page are you
18 talking about?

19 Q. Well, it's been on the last page, which
20 is the federal supporting statements on the other
21 ones. I don't see it. I just want to make sure you
22 agree with me.

23 A. You seem to be right.

24 Q. Sir, your 2020 return, Exhibit Number 16,
25 is an amended return, right?

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M. LICHTENSTEIN

1
2 A. I don't remember now.

3 Q. You can look at the second page, which is
4 the actual first page of the return. You'll see box
5 5 checked, amended return.

6 A. Okay.

7 (Whereupon, a 2020 Form 1065 was marked
8 as Lichtenstein Exhibit 17 for
9 identification, as of this date.)

10 Q. And you should have now Exhibit 17, which
11 looks like the amended return?

12 A. Looks like --

13 MR. KELLEY: What do you mean? Are you
14 saying '16's not the amended return?

15 MR. FREEDMAN: I'm sorry. Thank you.
16 It's the original return, at least a piece of
17 the original return that was provided to us.

18 Q. Let me know when you have it, please. It
19 starts Bates stamp 3127. And you see that this was
20 filed on September 16, 2021, right?

21 A. Okay.

22 Q. Tell me, sir, why was the original 2021
23 filed on September 16, 2021, but all the other
24 returns weren't filed until February 24, 2022?

25 A. Because at the time they were saying for

M. LICHTENSTEIN

1
2

bankruptcy court purposes you must file the 2020.

3

Something along those lines.

4

Q. Have you filed your 2021 return?

5

A. I think so.

6

Q. The debtor has a copy of that?

7

A. If we filed, there's a copy of that, yes.

8

Q. You can provide it to us?

9

A. If we filed it, yeah.

10

Q. Do you know if you filed it or not?

11

A. I don't know right now.

12

Q. Who on behalf of the debtor would know?

13

A. Me. I will check my records.

14

Q. Why don't you flip to page 5 of this

15

return.

16

A. What's this return? Which exhibit?

17

Q. Exhibit 17.

18

A. Yes.

19

Q. Do you have it up now? I thought you had

20

it up. I can start again. Does this appear to be a

21

true and correct copy of the debtor's original 2020

22

return?

23

A. One second. I'm pulling it up.

24

Q. Yes, sir.

25

A. Which page are you talking?

Page 268

M. LICHTENSTEIN

1
2 Q. My first question is: Does this appear
3 to be a true and correct copy of the debtor's
4 original 2020 return?

5 A. I don't remember what that was.

6 Q. This was produced by the debtor. It
7 bears Bates stamp Williamsburg supplemental
8 production 3218.

9 Do you have any reason to doubt this is
10 a true and correct copy of the debtor's original
11 2020 return?

12 A. It seems like the original one.

13 Q. You will recall at the beginning of your
14 deposition today we talked about the line of credit
15 agreement that was not reflected on the prescription
16 schedules, wasn't reflected in the disclosure
17 statement, and Mr. Rauch and Mr. Goldwasser
18 testified that it was first provided to them a
19 couple of weeks ago.

20 Do you remember that general line of
21 questioning?

22 A. I remember telling you that I highly
23 doubt that Mr. Rauch testified he only saw it a few
24 weeks ago.

25 Q. Okay. Go to page 5 of this return, this

M. LICHTENSTEIN

1
2 return that was filed before all of the other
3 returns we've gone through today.

4 Let me know when you're there.

5 A. Okay. I'm here.

6 Q. Line item 19A, loans from partners, what
7 does it say?

8 A. It says zero.

9 Q. And above that, other current
10 liabilities, 17.

11 Do you see that line item?

12 A. Yeah.

13 Q. \$83,517,770?

14 A. Yeah.

15 Q. That's the debt owed to Benefit Street?

16 A. Yeah, but that's an incorrect number
17 also. It was amended because it's not correct.

18 Q. Okay.

19 When you filed your 2020 return,
20 there's no expression or reflection of any
21 shareholder loans on this return, correct?

22 A. This return was filed in a rush. It had
23 many errors. That's why it was amended. It's
24 missing a lot of information and had many errors.

25 Q. Just like your bankruptcy schedules?

Page 270

M. LICHTENSTEIN

1
2

A. I don't think the bankruptcy schedules
3 had errors.

4 Q. Well --

5 A. What errors did the bankruptcy schedules
6 have?

7 Q. We'll go through them.

8 A. So on February 21, the debtor filed its
9 motion to extend exclusivity, which is docket 398,
10 and we could bring this up if you would like to see
11 it.

12 It says at paragraph 34: The debtor's
13 plan provides for, quote, the preservation of tens
14 of millions of dollars of equity.

15 Sir, we're pulling it up right now for
16 you. It's doc entry 398, and it's being published
17 as Exhibit 18.

18 (Whereupon, a motion was marked as
19 Lichtenstein Exhibit 18 for identification,
20 as of this date.)

21 Q. Let me know when you have it, sir. Do
22 you have it, sir?

23 A. I'm pulling it up.

24 Q. Thank you.

25 A. Okay.

2. Moskovits

- Moskovits, p. 80, l. 14 through p. 81, l. 16 (no video)

Page 80

1 TOBY MOSKOVITS

2 record, I do not recall.

3 What I said is that she

4 certainly played a role during the construction

5 period.

6 I cannot tell you when she

7 became an employee of the management company; I

8 would have to check the records.

9 Q Since that point in time, has

10 Miriam Gross provided services on any of your

11 other projects?

12 A No, she works full-time for the

13 Williamsburg Hotel.

14 Q And since the time that

15 Mr. Kirschner became an employee of the

16 management company, has he provided services on

17 any of your other projects?

18 A Mr. Kirschner works for the

19 Williamsburg Hotel.

20 Q So the answer is no?

21 A No.

22 Q And Mr. Rauch, since he became

23 an employee of the management company, has he

24 provided any services on any of your other

25 projects?

Page 81

TOBY MOSKOVITS

1
2 A Mr. Rauch rarely gets to sleep
3 because he's been in a series of abusive
4 interactions with the --

5 Q Ma'am, stop.

6 A (Continuing) -- who we learned
7 now is taking direction from your law firm.

8 Q Ma'am, stop, stop.

9 A Mr. Rauch effectively works
10 until midnight or 1:00 a.m.

11 Q A simple question, ma'am, was
12 since Mr. Rauch became an employee of the hotel
13 management company, has he provided services on
14 any of your other projects?

15 A No, he works 14 to 16 hour days
16 doing his job.

17 MS. PARLOVECCHIO: Gary, we have
18 been going over an hour, I think it
19 would make sense to have a quick break.

20 I understand we are under time
21 constraints.

22 MR. FREEDMAN: I offered that,
23 Gina, I would ask you take the
24 opportunity to talk to your client, not
25 about her testimony, but if you could

- Moskovits, p. 133, l. 10 through p. 141, l. 22 (video - p. 134, l. 10 through p. 136, l. 3; p. 137, l. 4 through p. 138, l. 9 and p. 139, l. 24 through p. 140, l. 24 only)

Page 133

1 TOBY MOSKOVITS

2 designate months ago, we designated

3 topics, we designated the witnesses on

4 February 24th, and then we made an

5 amendment prior to this deposition

6 beginning, for the record.

7 MR. FREEDMAN: Again, we can ask

8 the judge to deal with it, if it becomes

9 an issue.

10 Q Ms. Moskovits, does the Debtor

11 have income?

12 A There is the management company

13 in place, that has been the case from the date

14 of opening, even predating the closing of the

15 loan with Benefit Street, that handles the

16 income and expenses on behalf of the Debtor.

17 MR. FREEDMAN: Is she freezing

18 just for me or everyone?

19 THE VIDEOGRAPHER: She is frozen,

20 but I think she's back now.

21 A I'm here.

22 Q Ms. Moskovits, you froze.

23 A Did you hear my -- I will ask

24 the court reporter --

25 THE WITNESS: Mr. Court

TOBY MOSKOVITS

Reporter --

Q Ms. Moskovits, you glitched in the middle of your testimony, so we didn't get it all.

But I had hoped that during the break there could be a discussion between you and your counsel and an attempt to streamline this.

So my question was -- it called for a yes or no, and then to the extent that you feel you need to clarify, you certainly have that right.

My simple question was, and you asked for simple questions, was does the Debtor have income?

A You're asking questions that a proper response does not allow for a yes or no, so I will repeat my answer, because I'm not sure when it froze.

What I said is from the date of the opening of the hotel through the time when Benefit Street gave the loan, so they were fully aware of this, the management company deals with the income and expenses on behalf of

Page 135

TOBY MOSKOVITS

1
2 the Debtor.

3 Q Does the Debtor have income,
4 ma'am?

5 Yes or no.

6 MS. PARLOVECCHIO: Objection.

7 A I believe that I answered that
8 question already.

9 Q So you are refusing to answer
10 the question?

11 A No, I --

12 MS. PARLOVECCHIO: Objection.

13 A I answered the question and I
14 told you that the management company, which is
15 pretty standard in this industry, and certainly
16 predated Benefit Street's participation in the
17 loan, so they were aware of this, and they are
18 familiar with this because they lend on many
19 hotels, the management company handles the
20 income and expenses on behalf of the Debtor,
21 which is the owner of a piece of real estate
22 with no employees and a hotel is a business.

23 It's not just an entity that
24 collects rent, it's a business, and the income
25 and expenses is handled by the management

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Page 136

TOBY MOSKOVITS

1
2 company and has been the case from the date of
3 openingment.

4 Q I'm going to try one last time.
5 Putting aside the management
6 company, does the Debtor itself have income?

7 A To the extent that there would
8 be excess cash flow beyond the income and
9 expenses paid by the management company, the
10 Debtor would have income.

11 Unfortunately, Benefit Street
12 attempted to derail our path to stabilization,
13 which you don't want to hear about, so I won't
14 go into that, but I will repeat again so there
15 is no -- first of all, I dispute the fact that
16 you continue to essentially insult me and my
17 attorney by stating that we are not responding
18 when we are responding.

19 You are asking me questions that
20 don't -- aren't respondable with a simple yes
21 or no.

22 Income and expenses are run
23 through the management company, and I said that
24 very clearly.

25 And I'm sorry if it's frozen and

TOBY MOSKOVITS

1
2

glitched.

3

Hopefully it won't happen again.

4

Q

So, the revenues that are

5

reflected in the Debtor's monthly operating

6

reports, are those revenues of the Debtor or

7

revenues of the management company?

8

A

The income and expenses are

9

handled by the management company.

10

Q

Let me try my question again.

11

The revenues reflected on the

12

Debtor's monthly operating reports filed with

13

the court, are those revenues that are owned by

14

the Debtor or the management company?

15

A

I'm not sure what you're asking.

16

Is it a question of legal

17

control of the money?

18

A DIP account is in place now

19

that all the money is running through. It

20

sounds like you are asking me a legal question

21

and I am giving you a practical response.

22

Q

I am asking, to the best of your

23

understanding as a 50 percent owner of the

24

Debtor and its corporate representative here

25

today, in those monthly operating reports

TOBY MOSKOVITS

reflecting revenues, who owns the revenue?

A Until the entity went into bankruptcy and from the first date of opening, all of the income and expenses ran -- were handled by the management company.

Once the entity went into bankruptcy, we were instructed to set up DIP accounts and that change was made.

Q My question is who owns that revenue?

Is it the Debtor or is it the management company?

MS. PARLOVECCHIO: Objection.

A I think I have answered that.

What I said is that the management company from the date of opening collected and handled all income and expenses on behalf of the business running this hotel.

The changeover to DIP accounts in the name of the Debtor took place after the filing of the bankruptcy, at the instruction of the CRO and the lawyers involved in the case.

Q And assuming the plan gets confirmed on April 7, 2022, are you going back

TOBY MOSKOVITS

1
2 to the pre-bankruptcy way that the revenues
3 were maintained?

4 A I'm not a lawyer, but I assume
5 that they are no longer DIP accounts when a
6 bankruptcy ends.

7 Q And so are you going back to the
8 prepetition way of handling cash and revenue?

9 A Like many hotels in this
10 industry, from the date of opening the
11 management company handled expenses and income.

12 So, to the extent that a
13 bankruptcy ends and they are no longer DIP
14 accounts, then there will be no more DIP
15 accounts.

16 I'm not sure if you are asking
17 me -- I'm not a lawyer, so I don't know the
18 mechanics of how this would even work.

19 But I have been advised that DIP
20 accounts are standard procedure during a
21 bankruptcy.

22 So there wouldn't be DIP
23 accounts after the bankruptcy.

24 Q A simple question, ma'am, is
25 after the bankruptcy is over, are you going

Page 140

1  TOBY MOSKOVITS

2 back, is the Debtor going back to the way it
3 handled its revenues and financial accounts the
4 way it did prepetition?

5 MS. PARLOVECCHIO: Objection,
6 asked and answered.

7 MR. FREEDMAN: It's definitely
8 not been answered, it's definitely been
9 asked.

10 A It's been answered. There was a
11 change made to the use of DIP accounts based on
12 the bankruptcy status and the instructions we
13 were given by our counsel.

14 And prior to that, from the date
15 of opening and including during the period that
16 Benefit Street, who is a sophisticated lender
17 in the hotel industry, reviewed our systems and
18 process, themselves and with third parties, we
19 have a management company in place that runs
20 the hotel and handles income and expenses.

21 Q So --

22 A When there are no more DIP
23 accounts, that's how it's going to be, the way
24 it was.

25 Q It's going back, then it's going

Page 141

TOBY MOSKOVITS

1
2

back the same way, right?

3

A My response to you is the change

4

was made to accommodate requirements of the

5

bankruptcy and the use of DIP accounts.

6

Q And is it going back to the

7

prepetition way after this bankruptcy? It's a

8

simple question, yes or no?

9

MS. PARLOVECCHIO: Objection to

10

form.

11

A If there are going to be no DIP

12

accounts, then we are no longer going to use

13

DIP accounts to collect the money.

14

The structure -- I'm trying to

15

respond to you again, because maybe I'm not

16

being clear, maybe the phone is freezing over.

17

The structure that existed from

18

the day we opened that was evident to Benefit

19

Street which they were very familiar with when

20

they did their due diligence, is the existing

21

management company that runs the business of

22

the hotel and handles all income and expenses.

23

Q Prepetition, Ms. Moskovits, how

24

many bank accounts did the Debtor have?

25

A I don't have exact number in

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- Moskovits, p. 533, l. 19 through p. 540, l. 19 (video – p. 533, l. 19 through p. 538, l. 14 only)

Page 533

1 TOBY MOSKOVITS VOL. II

2 signed on behalf of the Debtor, correct?

3 A. I believe that is correct, yeah.

4 Q. And you actually --

5 A. They're filed -- they're filed

6 electronically. So it's not actually signed.

7 Q. But it's under your signature, right?

8 A. Correct.

9 Q. And you're actually the tax partner

10 -- the designated tax partner or tax manager for

11 the Debtor LLC, correct?

12 A. I believe --

13 MS. PARLOVECCHIO: Objection.

14 A. I believe that's the case.

15 Q. Tax matters partner?

16 A. I'm actually not sure. I would have

17 to see the document. But if you tell me that

18 that's what it says, then that's the case.

19 Q. Okay. So tell me as a tax matters

20 partner or manager, what have you done over the

21 past four years to fulfill your obligations to

22 make certain that timely tax returns are filed

23 for the Debtor?

24 MS. PARLOVECCHIO: Objection.

25 A. It was our practice to file tax

TOBY MOSKOVITS VOL. II

1
2 returns when the property started to cash flow.
3 During that time we were dealing with a lot of
4 crisis created by your client and then COVID hit.
5 We have subsequently caught up on all of our
6 taxes and, frankly, no taxes are due. It was
7 just about the filing.

8 Q. What does that mean that you would
9 "file tax returns when the property started to
10 cash flow"?

11 A. You would need to speak with -- I
12 need to consult with my accountant, but that's
13 been our practice. I'm not giving you -- I'm
14 explaining to you the practice.

15 Q. Well, what was your understanding of
16 the concept as the tax matters partner?

17 A. I did what my accountant told me to
18 do.

19 Q. So you can't tell me anything more
20 than that?

21 A. I am -- I am confirming that all the
22 tax returns have been filed.

23 Q. No, not my question. [MOTION] Move
24 to strike.

25 A. There is no money owed during the

TOBY MOSKOVITS VOL. II

1
2 previous period.

3 Q. [MOTION] Move to strike. Move to
4 strike. Move to strike.

5 MS. PARLOVECCHIO: Objection.

6 Q. Can you tell me anything more about
7 your testimony a moment ago that you were waiting
8 for the property to start cash flowing before
9 filing tax returns for the Debtor?

10 A. You would have to ask -- I would have
11 to consult with my accountant.

12 Q. Did you in accepting that advice or
13 recommendation have any understanding of what it
14 meant in abiding by that instruction or
15 recommendation?

16 A. No taxes were due and the filings
17 have all been brought current.

18 Q. Not my question.

19 The concept of not filing returns
20 until the "property started to cash flow," what
21 was your understanding of that concept in making
22 a determination as the tax matters partner for
23 the Debtor not to file returns for the past four
24 years until February of 2022?

25 MS. PARLOVECCHIO: Objection, form.

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TOBY MOSKOVITS VOL. II

A. I would have to consult with my accountant. There were no monies due for the periods and all the filings have been caught up.

Q. Okay. All I'm trying to understand, ma'am, is your understanding of the concept that you testified to in respect to no returns were required until "the property started to cash flow." Do you --

A. I'm not an accountant.

Q. Did you ask what that concept meant in trying to comply with your obligations as the tax matters partner for the Debtor?

A. I was too busy trying to understand your client's refusal to tell us how to cure these purported defaults and --

Q. Anything more you can testify as to that?

A. You asked me the same question again and again and again. So you want me to not respond with something else, then don't ask the same question.

I would have to consult with my accountant. Subsequently -- at this moment, every single tax return has been filed and there

TOBY MOSKOVITS VOL. II

1
2 was no monies due for the periods that we caught
3 up on.

4 Q. So what event -- well, let me ask it
5 differently.

6 If you weren't required to file tax
7 returns for 2017 because the property wasn't cash
8 flowing, if you didn't have to file a tax return
9 for 2018 because the property wasn't cash
10 flowing, if you didn't have to file a tax return
11 for 2019 because the property wasn't cash flowing
12 and you didn't have to file a return for 2020
13 because the property wasn't cash flowing, what
14 event all the sudden caused you to file tax
15 returns for the Debtor for those four years in
16 February 2022?

17 MS. PARLOVECCHIO: Object to form.

18 A. That's a question for my accountant.

19 Q. You as a corporate representative for
20 the Debtor cannot provide any additional
21 information on that?

22 A. It was the property -- actually 20 --
23 that year was the year we started stabilizing and
24 we started pulling together getting all of our
25 records in order.

TOBY MOSKOVITS VOL. II

1
2 Q. What year was that?

3 A. Whenever it was that you -- we
4 started pulling -- filing our taxes.

5 Q. That was a month ago.

6 That was the first time you started
7 pulling records together?

8 A. No, the taxes -- I have --

9 MS. PARLOVECCHIO: Objection.

10 A. I would have to see it in front of
11 me, but I do not believe it is correct that taxes
12 were not filed on the entity in any fashion until
13 a month ago. I don't believe that that's
14 correct.

15 Q. Well --

16 A. But I would have to check with my
17 accountant.

18 Q. You want us to show the tax returns?

19 A. I don't -- I would have to check with
20 my accountant as to when they were filed.

21 At this time, all tax returns have
22 been -- to the best of my knowledge -- have been
23 made current and for the previous periods, there
24 were no taxes due.

25 Q. Okay. Anything more you can tell me



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TOBY MOSKOVITS VOL. II

2

about why the Debtor didn't file returns for four
years?

3

4

MS. PARLOVECCHIO: Objection.

5

A. All taxes have been made current and
there was no monies due for the previous periods.
All taxes have been made current.

6

7

8

Q. Why does the management company
reflect income if all of the revenues of the
hotel are managed by the management company? Let
me ask it differently.

9

10

11

12

If the Debtor had no income requiring
it to file tax returns, why does the management
company's returns reflect income?

13

14

15

MS. PARLOVECCHIO: Objection.

16

A. You actually that -- first of all,
that's not what I said. What I said is --

17

18

Q. No, no, no, my question --

19

A. -- that there were no taxes due.
You're putting words in my mouth. I said there
were no taxes due.

20

21

22

Q. Okay. So --

23

A. Please don't -- please don't --
please put words in my mouth.

24

25

Q. Why -- why --

TOBY MOSKOVITS VOL. II

1
2 A. You're not supposed to be answering
3 the questions. You're supposed to be asking
4 them. I said there were no taxes due. It was
5 very clear in my response.

6 Q. Please don't -- please don't get
7 nasty. I'm almost done.

8 All I'm trying to understand is if
9 the Debtor didn't have income requiring it to
10 file tax returns, why does the management
11 company's returns reflect that it had income when
12 all it's doing is managing the business of the
13 hotel?

14 MS. PARLOVECCHIO: Objection, form.

15 A. The taxes were filed as per my
16 accountant and what I said clearly was that there
17 was no taxes due. I didn't say that there was no
18 income. The taxes were filed as per my
19 accountant. I'm not an accountant.

20 Q. Why did -- by the way, why didn't you
21 and Michael file proof of claim in the bankruptcy
22 case?

23 MS. PARLOVECCHIO: Objection --

24 A. What are you referring to?

25 Q. Why didn't you --

3. Lichtenstein – MC

- Lichtenstein MC, p. 21, l. 12 through p. 25, l. 17 (no video)

Page 21

1 MICHAEL LICHTENSTEIN

2 file a Proof of Claim in this Debtor case,

3 correct?

4 A Possible, I don't remember now.

5 Q Was that a decision that you and

6 Ms. Moskovits made?

7 A I don't remember who made the

8 decision, but if the management company did not

9 file claims and the management company was owed

10 money, it was because insider claims were not

11 filed.

12 Q Does the management company

13 presently receive any revenue that is not

14 specifically related to the operations of the

15 Williamsburg Hotel?

16 MR. KELLEY: Objection to form.

17 You can answer the question.

18 A I'm not sure what that question

19 refers to, and to what time period that

20 question refers to.

21 Q I asked you now.

22 Are there any monies that flow

23 through the -- sorry, the management company

24 bank accounts that are not generated at the

25 hotel?

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2

MICHAEL LICHTENSTEIN

3

A There definitely were bank
accounts and funds coming in that were not
generated from the Debtor's revenue; yes.

5

Q Were those monies generated
through other businesses?

7

A Yes; they were generated from
other businesses.

9

Q What businesses were those?

10

A Other hotel deals.

11

Q What hotel deals had revenue
that were being deposited into the management
company's accounts?

14

A You interrupted my answer.

15

I started saying that there
would be either revenue from other hotel deals
or from other sources.

18

I don't remember now all the
sources.

20

Q Can you tell me any sources?

21

A Other hotel deals, the Eidolon
was one source of funds of the management
company, and such other -- I don't remember now
any other sources.

25

Q Okay. I had asked you a moment

Page 23

MICHAEL LICHTENSTEIN

1
2 ago what hotel deals are you referring to?

3 A Well, we just discussed, it was
4 a hotel deal in Brooklyn, there was a hotel
5 deal in Miami.

6 I don't remember now all the
7 deals that were discussed in the last five
8 years.

9 Q And you said something like the
10 Eidolon.

11 What was that?

12 A You know very well what the
13 Eidolon is, because you asked me about it.

14 Q I don't know, sir, so what is
15 it?

16 A I would appreciate if you don't
17 lie, since you very well know what it is,
18 because you asked me about it.

19 So the Eidolon was a source of
20 funds of the management company.

21 Q What is the Eidolon, sir? I
22 don't know, and this is your deposition, so I
23 need an answer to the question so I can move
24 on.

25 A I would appreciate again if you

Page 24

MICHAEL LICHTENSTEIN

1
2 stop lying. You know very well what the
3 Eidolon is, it is a loan provided by the SBA to
4 the management company.

5 Q The EIDL loan, that's what you
6 are referring to?

7 A I really don't appreciate your
8 playing dumb and lying to me three times as if
9 you didn't know what I'm talking about.

10 Q All right.
11 Does the management company have
12 a specific bank account associated with the
13 Miami project?

14 A Not that I remember now.

15 Q Does the management company have
16 a specific bank account associated with the
17 Bushwick project?

18 A I don't remember now which
19 accounts were associated with what, and frankly
20 it's none of your business if it's not related
21 to the Debtor.

22 Q Did the management company ever
23 receive a fee for any work it did on the
24 Bushwick project?

25 A I will not answer that question

Page 25

MICHAEL LICHTENSTEIN

1
2 now, A, because I don't remember these, if
3 anything was incurred in the last few years.

4 B, sources of income of the
5 management company that are unrelated to the
6 Debtor are none of your business.

7 Q Did the management company ever
8 receive a fee in respect to the Miami project?

9 A Same answer applies to this,
10 too.

11 Q You are refusing to answer the
12 question, sir?

13 A I am answering the question,
14 that it's none of your business if the
15 management company had sources of funds from
16 other places that are not related to the
17 Debtor.

18 Q Well, sir, since you brought up
19 the EIDL loan, do I have it correct that there
20 was a \$350,000 loan that was made under the
21 EIDL, E-I-D-L, program to the management
22 company in July 2021, correct?

23 A Yes.

24 Q And the funds for that loan were
25 received into a management company account,

- Lichtenstein MC, p. 42, l. 6 through p. 43, l. 11 (no video)

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1 MICHAEL LICHTENSTEIN

2 In other words, does the

3 management company have it in its possession?

4 A It would have it, yeah. I don't

5 have anything in my possession right now.

6 Q Does the -- did the management

7 company file a tax return for 2017?

8 A As far as I remember, yes.

9 Q We have received neither,

10 notwithstanding our request.

11 Do you know why?

12 A I have no clue why.

13 Q Exhibit 3 is the management

14 company's 2018 return.

15 (The above described document was

16 marked Exhibit 3 for identification as of

17 this date.)

18 Q Let me know when you have it,

19 please.

20 A Okay.

21 Q In 2018, did the management

22 company have receipts or sales not otherwise

23 relating to the Williamsburg Hotel?

24 A I don't remember now.

25 Q You don't know, sir?

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MICHAEL LICHTENSTEIN

1
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A I said I don't remember now the
breakdown, that's what I said. Please don't
put words in my mouth.

5

Q What other sources of receipts
or sales would the management company have in
2018 other than its relationship with the
Williamsburg Hotel?

9

A Hello?
You're freezing, I can't hear
you.

12

MR. KELLEY: You're freezing on
his screen. Hold on.

14

THE VIDEOGRAPHER: Would you like
to go off the record? The witness is
frozen on mine. I think he's having a
connection issue.

18

MR. FREEDMAN: Yes, off the
record, please.

20

THE VIDEOGRAPHER: He just came
back.

22

MR. KELLEY: You had internet
interruption.

24

THE WITNESS: Me?

25

MR. KELLEY: Let's go back on the

- Lichtenstein MC, p. 44, l. 12 through p. 55, l. 20 (video – p. 44, l. 12 through p. 47, l. 13; p. 47, l. 22 through p. 48, l. 2; p. 48, l. 13 through p. 49, l. 10; p. 50, l. 17 through p. 51, l. 11; p. 51, l. 22 through p. 54, l. 2; p. 55, ll. 3-13 only)

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1 MICHAEL LICHTENSTEIN

2 record.

3 THE VIDEOGRAPHER: He's still

4 having it. We are now off the record.

5 The time is 12:02 p.m.

6 (At this point in the proceedings

7 there was a recess, after which the

8 deposition continued as follows:)

9 THE VIDEOGRAPHER: We are now

10 back on the record. The time is 12:04

11 p.m.

12 Q The question that was pending

13 when you froze, Mr. Lichtenstein, was what

14 other sources of receipts or sales did the

15 management company have in 2018 other than its

16 relationship with the Williamsburg Hotel?

17 A I wouldn't remember now. Most

18 of it would be from hotel operations. I have

19 to get back to you if some of it is from other

20 sources.

21 Q So, I'm looking at the first

22 page of the 2018 return that is marked as

23 Exhibit 3.

24 Do you see that, sir?

25 A Yes.

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2

MICHAEL LICHTENSTEIN

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Q Line 1A, gross receipts of sales
says \$15,117,101. Do you see that?

4

A Yes.

5

Q And to the best of your
recollection, all or most of that would have
come from the Williamsburg Hotel?

6

A Most of it, yeah, all or most of
it would come from the Williamsburg Hotel.

7

Q What contract or agreement
provides for the management company to make a
claim of ownership of the gross receipts of
sales generated at the Williamsburg Hotel?

8

A First of all, this is not a
claim of ownership, necessarily.

9

But the money flows through the
Williamsburg Hotel, and as such the accountants
decided to book it this way.

10

Q It flows through as a
pass-through entity, correct?

11

A I don't want to get into
accounting terms, and I don't want to take
responsibility for accounting terms now.

12

Q Does the management company have
an ownership interest in any of the funds that

13

MICHAEL LICHTENSTEIN

1
2 flow through its accounts that are generated at
3 the Williamsburg Hotel?

4 MR. KELLEY: Objection to form.

5 Go ahead, you can answer.

6 A As I said, there might be some
7 funds in some years that are not sourced by the
8 Debtor.

9 As to the Debtor's funds that
10 are flowing through the management company, I
11 will not respond as to classifications for tax
12 purposes without an accountant.

13 Q I'm asking a different question,
14 sir.

15 I'm asking you based upon a
16 representative of the management company here
17 today, what is your understanding of the
18 management company's ownership interest in any
19 funds flowing through its accounts that are
20 generated at the Williamsburg Hotel?

21 MR. KELLEY: Objection to form.

22 A And I'm answering as a
23 representative of the management company that I
24 will not respond as to classifications of
25 funding or funds flowing through as it refers

MICHAEL LICHTENSTEIN

1 to tax returns and such without an accountant.

2
3 Q On line 22, ordinary business
4 income, \$54,460, do you see that?

5 A Okay.

6 Q Is that ordinary business income
7 generated by anything other than the management
8 company's relationship with the Williamsburg
9 Hotel?

10 A I already responded that I am
11 not sure if there was other income in 2018,
12 therefore I cannot answer this question right
13 now with certainty.

14 Q You are familiar with the
15 bankruptcy schedules filed in this case, sir?

16 A Not really that familiar.

17 Q You reviewed them, we talked
18 about them last time we took your deposition,
19 right?

20 A We talked about them. I don't
21 remember reviewing them.

22 Q I will show you Exhibit 4 and
23 ask you to flip to page 24 of 33.

24 (The above described document was
25 marked Exhibit 4 for identification as of

MICHAEL LICHTENSTEIN

1
2 this date.)

3 MR. KELLEY: Gary, I couldn't
4 hear the page number. Could you repeat
5 that, please?

6 MR. FREEDMAN: 24 of 33.

7 MR. KELLEY: Thank you.

8 A For the record, I'm pretty
9 positive that we did not review them last time,
10 but which page are you talking about?

11 Q Still 24 of 33.

12 A Okay.

13 Q So, you see part 1, income,
14 gross revenue from business?

15 A Excuse me, which part?

16 Q Part 1, gross revenue from
17 business.

18 A Yes.

19 Q What is the Debtor's or was the
20 Debtor's gross revenue from business for the
21 fiscal year 2018?

22 A Okay.

23 Q What is it, sir? Please read it
24 out loud.

25 A It shows here \$15,117,524.

MICHAEL LICHTENSTEIN

Q And what did the management company show as gross receipts of sales? Flip back to Exhibit 3.

A \$15,117,101.

Q It's \$15,117,101, correct?

A Um-hum, yes.

Q So, the difference is about \$400, correct?

A I guess.

Q So, it's fair to say that the \$15,117,101 reflected on the management company's 2018 return was generated at the hotel, correct?

A Again, actually my thing jumped to page 1.

Which page did you say on the schedules, 24?

Q I'm on the 2018 return, sir.

A You wanted to flip back to the schedule, right?

Q No. The 2018 return, Exhibit 3.

A Okay. So let's find -- so what's your question?

Q The \$15,117,101 on line item 1A

MICHAEL LICHTENSTEIN

1
2 of the management company's 2018 return
3 corresponds other than \$400 with the same
4 number on the bankruptcy schedules reflecting
5 gross revenue for the Williamsburg Hotel Debtor
6 business, correct?

7 A Okay.

8 Q So, can you tell me why the
9 bankruptcy schedules are showing that the
10 Debtor had, I'm just rounding off, \$15 million
11 in gross revenue for 2018, and the management
12 company's tax return for 2018 reflects the same
13 amount of gross receipts for sales?

14 A I'm not understanding the
15 question. What do you mean why? What's the
16 question?

17 Q How can the Debtor file
18 bankruptcy schedules saying it had \$15 million
19 of gross revenue for 2018, and the management
20 company also say that it had \$15 million of
21 gross receipts for the same year?

22 A The Debtor is disclosing the
23 full revenues that are related to the Debtor.

24 Q Okay. And the \$15 million on
25 the management company's tax return for 2018

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MICHAEL LICHTENSTEIN

1
2 also relates to revenues generated at the
3 hotel, correct?

4 A I don't know now the exact
5 details, but it seems so, yes.

6 Q So my question is how could two
7 entities claim the same receipts?

8 A They are claiming -- they are
9 saying the same numbers in answer to very
10 different questions and in answer to two
11 different things.

12 So I am not understanding the
13 point that you are trying to make.

14 Q Line item 15, interest,
15 \$1,073,714, who was the management company
16 paying interest to in 2018?

17 A I am going back to the return,
18 one second. Which line item?

19 Q 15.

20 A Okay. What's the question,
21 repeat the question again?

22 Q Let me try again.

23 Line item 15 of the 2018 return
24 shows interest of \$1,073,714.

25 Do you see that, sir?

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A Yes.

Q Who was the management company paying interest to in 2018?

A I don't remember at all. It could have been to Benefit Street, mezz loan, I don't even know.

I don't know, you have to check with the accountant.

Q Did the Williamsburg Hotel BK LLC have a lending relationship with Benefit Street?

A No.

Q Did the management company have a lending relationship with the mezz company, the mezz lender?

A No; but it could have made a payment on behalf of the Debtor.

I don't know what it is, I have no clue, I have to check with the accountant.

Q So assuming all of the revenue reflected on this 2018 return related directly to the operations at the Williamsburg Hotel, how did the management company earn \$54,460 in business income?

MICHAEL LICHTENSTEIN

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A As I said, I will not be
answering such questions without an accountant.

Q Where was that business income
deposited?

MR. KELLEY: Objection to form.

A Either in the management
company's account or back to the Debtor.

Q Do you know as you sit here?

A Nope, I have no clue, I don't
remember now.

Q If you flip to page 5 of the
2018 return, sir --

A Yes.

Q -- the balance sheet, schedule
A, the cash, \$92,887.

A Did you say page 5?

Q 5 of the return, balance sheet,
schedule L, cash, beginning of the year,
\$92,887, at the end of the year, \$93,562.

What was the source of that cash
other than operations at the Williamsburg
Hotel?

A I can't answer you right now
about 2018 sources of cash.

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MICHAEL LICHTENSTEIN

I can check and get back to you.

Q Line -- you've been telling me you are going to get back to me, and you haven't gotten back to me with any of the answers to any of the questions I have asked.

But if you can, that would be great?

A That is a false statement.

MR. GLUCKSMAN: Argumentative, argumentative.

Q 12 --

A One minute. We got back to you with plenty of answers.

Q No, sir, but I don't want to argue.

A We did. We provided you information. I know for a fact my lawyers provided you information.

In fact you just went through information of an EIDL loan document that was provided to you following the past deposition.

Q That I had asked for six times.

A I would appreciate, Mr. Freedman, if you stopped announcing false

MICHAEL LICHTENSTEIN

statements. Thank you.

Q 12A, intangible assets, \$8,750 at the beginning of the year, \$10,500 at the end of the year.

What are those assets?

A You said \$2,500. It says \$10,500.

Q I said \$10,500, but if I said it incorrectly, I will say it again. \$10,500.

A And the answer is that I'm not going to answer such questions without my accountant.

Q Is it fair to say you're not going to answer any questions with respect to the management company's tax returns?

A That is not fair to say at all. I said I won't answer any of these questions right now in this deposition without discussing with my accountant.

MR. GLUCKSMAN: Mr. Freedman, this is argumentative. You are not during -- this is not a cage match.

MR. FREEDMAN: I didn't hear anything you just said, Mr. Glucksman.

- Lichtenstein MC, p. 56, l. 9 through p. 62, l. 13 (video – p. 56, l. 20 through p. 59, l. 13; p. 59, l. 19 through p. 60, l. 9; p. 62, ll. 4-13 only)

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1 MICHAEL LICHTENSTEIN

2 MR. GLUCKSMAN: Mr. Glucksman

3 said this is not a cage match, and I

4 would appreciate if you wouldn't badger

5 my witness.

6 MR. FREEDMAN: I'm not going to

7 even dignify that with a response, sir.

8 MR. KELLEY: Let's proceed.

9 Q By the way, why did the

10 management company wait until February 2022 to

11 file its 2018 return?

12 A As I said, I will not be

13 responding on any questions about the

14 management company that are not related to the

15 Debtor.

16 And I will not be responding on

17 any questions on the tax returns without my

18 accountant.

19 Q We have just marked Exhibit 5,

20 which is the Debtor's 20 -- Exhibit 5 is the

21 management company's tax return for 2019.

22 Is it a true and correct copy,

23 sir?

24 (The above described document was

25 marked Exhibit 5 for identification as of

MICHAEL LICHTENSTEIN

this date.)

A It seems like it is.

Q And again, if I ask you any questions about this return, you are not going to answer them, is that correct?

A I will not be answering specific questions about these tax returns that are not related to the Debtor or that I -- or that are related to tax matters of classifications or such matters where I would rely on my accountant.

You can ask the question and either I'll answer or I won't answer.

Q Here is a question.

Line item 1A on the second page shows gross receipts of \$20,034,954, and if you flip back to the bankruptcy schedules, for 2019, the Debtor reflects gross revenues of the same exact amount.

How is that -- how can that be, sir?

A As I said, these are two different forms, two different questions.

So I'm not really understanding

1 MICHAEL LICHTENSTEIN

2 your question and I will not respond any
3 further on this.

4 Q If the management company is a
5 pass-through entity, receiving the -- taking in
6 the receipts from the hotel and paying
7 expenses, how is the management company
8 claiming ordinary business income of \$94,698
9 for 2019?

10 A The management company is not
11 claiming generally any income from the hotel
12 revenues and, if anything, it is transferring
13 that to the Debtor, which is on the last page,
14 which we went through last time, where we chose
15 I think for this year \$1.5 million, or I don't
16 know, some large sum that was transferred to
17 the Debtor.

18 We went through this actually in
19 the last deposition, so --

20 Q My question is, though, sir, how
21 is the management company claiming that it had
22 income of \$94,698 in 2019?

23 MR. KELLEY: If you know. I
24 don't think he's asking you to formulate
25 a legal conclusion, but if you know, go

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MICHAEL LICHTENSTEIN

ahead and answer.

A I think that the question the way it's asked is not a correct question, and I will not respond on tax matters and tax classifications without my accountant.

Q And this return is dated May 4, 2021, and the first page shows it was filed on May 26, 2021.

Do you see that, sir?

A Could be.

Q Do you see it, sir?

A Okay, I'm not --

Q So why did the management company file its 2019 return in May 2021, but filed its 2018 return in February of 2022?

A I don't remember now the timing when the tax returns were filed.

Q You will have up in a moment Exhibit 6. Let me know when you have it.

(The above described document was marked Exhibit 6 for identification as of this date.)

A Exhibit number 6?

Q Yes, sir.

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MICHAEL LICHTENSTEIN

1
2

A Are you planning on wasting the
next hour going through tax returns?

4

Q Let me know when you have
Exhibit number 6, please.

6

A I have Exhibit number 6, and I
think this is a waste of time, but if you want
to spend your entire deposition going through
tax returns, that is fine with me.

10

Q Okay, this is another copy of
the management company's 2019 return, correct?

12

A I have no clue.

13

Q Does it appear to you to be
another copy of the 2019 return, sir?

15

A I wasn't so focused on the
previous one. So I can look at the previous
one?

18

There might have been some
returns that were amended, and that's all I'm
going to say about that.

21

Q Well, this return doesn't
reflect it as an amended return, does it?

23

The box up on top is not
checked?

24

25

A I wouldn't know enough to answer

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MICHAEL LICHTENSTEIN

1
2

about that.

3

Q

Well, you don't see -- if you go

4

back up to the top, sir, you don't see box 5

5

checked that says amended return, correct?

6

MR. GLUCKSMAN: Objection.

7

A

Okay.

8

Q

Okay. And this return is dated

9

February 24, 2021, correct?

10

A

Okay.

11

Q

So why is the Debtor filing a

12

new return on February 24, 20 -- sorry, why is

13

the management company filing a new return for

14

2019 on February 24, 2021?

15

MR. KELLEY: Objection to form.

16

A

I actually am not understanding

17

your question. What's the date of -- this is

18

February.

19

What's your question? The date

20

of the previous one is what?

21

Q

It's May 2021, and now we see

22

another return that was provided to us dated

23

February 24 -- I'm on the wrong date.

24

A

'21, actually.

25

Q

You are right, sir.

Page 62

MICHAEL LICHTENSTEIN

1
2

A They are both -- I don't
understand your question.

4

Q Why were two returns provided to
us for the management company for 2019 with two
different dates on them?

7

A I have no clue. Maybe one was a
draft, one was actually filed. I'm not sure.

9

Q Who would know on behalf of the
management company, who would be able to answer
that question?

12

A Me. I'll check into it and get
back to you.

14

Q What position does Mr. Rauch
have with the management company?

16

A He's the, if I remember
correctly, his title is finance manager or -- I
don't remember the exact title.

19

Q How long has he been an employee
of the management company?

21

A A few years, I don't remember
exactly when he started, but it's been a few
years.

24

Q You can't tell me when he
started?

25

- Lichtenstein MC, p. 68, l. 9 through p. 70, l. 25 (video – p. 68, l. 9 though p. 70, l. 11 only)

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1 MICHAEL LICHTENSTEIN

2 not just as a 30(b)(6) witness for the

3 management company.

4 A And in my individual capacity I

5 see zero relevance to respond about Mr.

6 Kirschner's past employment prior to his

7 involvement with the management company of the

8 Debtor.

9 Q Does Mr. Kirschner in his role

10 with the management company provide services

11 other than those related directly to the

12 operations of the Williamsburg Hotel?

13 MR. KELLEY: Objection to form.

14 You can answer.

15 A You love asking overbroad

16 questions, but I will say that Mr. Kirschner,

17 like Mr. Rauch, is quite busy and works

18 full-time and more than full-time for the hotel

19 and for the management company in the

20 management of the Debtor's asset.

21 Q Does Mr. Kirschner provide any

22 services for any of your other projects?

23 A Sometimes, on his off time, if I

24 ask him, sometimes.

25 Q How often does that happen?

1
2

MICHAEL LICHTENSTEIN

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21

22

23

24

25

A Not that often, and I don't have
to respond on such matters that don't relate to
the Debtor.

Q Is Mr. Kirschner separately
compensated for those services?

A Sometimes he is, sometimes he
isn't. I'm not going to answer on Mr.
Kirschner's personal finances that have no
connection to the management of the hotel or to
the Debtor.

Q Does Mr. Kirschner receive a set
amount of compensation for this other work per
month?

A I don't think that Mr.
Kirschner's compensation for or any funds that
Mr. Kirschner receives that are not related to
his full-time job that relates to the Debtor
have any relevance to this deposition.

Q For this other work that Mr.
Kirschner performs from time to time, is he
ever compensated out of the management company?

A Absolutely not.

Q Is he ever compensated out of
the Debtor's funds?

1 MICHAEL LICHTENSTEIN

2

3 A Mr. Kirschner works full-time
4 for the management company and it's a full-time
5 job. Actually it's more than a full-time job.
6 He is paid by the management
7 company for the full-time job that he provides
8 in the accounting department.

9 His personal finances are
10 absolutely none of your business and not part
11 of this deposition and I will not answer any
12 questions about it.

13 Q Let me make sure I get my
14 question out so you have it in mind.

15 For this other work that Mr.
16 Kirschner performs from time to time not
17 directly related to the Williamsburg Hotel, is
18 he ever compensated from funds that are derived
19 from the operations at the Williamsburg Hotel?

20 A And I answered that already.
21 The answer is no.

22 Mr. Kirschner gets paid by the
23 Williamsburg Hotel for more than a full-time
24 job that he puts in on the accounting
25 department where he stays very late hours and
works overtime most of the time.

- Lichtenstein MC, p. 92, l. 6 through p. 94, l. 3 (no video)

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1 MICHAEL LICHTENSTEIN

2 other unrelated businesses that are not related

3 to the Debtor.

4 And the court will have no

5 problem with that.

6 Q Has the management company

7 actively engaged in tax evasion, sir?

8 MR. KELLEY: Objection, that's

9 either harassment or argumentative.

10 You can answer the questions, but

11 we are not going to be on this line of

12 questioning very long.

13 Go ahead.

14 MR. FREEDMAN: Hold on, let me

15 deal with that.

16 The examiner has opined that he

17 believes that there is tax evasion.

18 Mr. Rauch testified that he had

19 concerns that there was tax evasion at the

20 management company and, in fact, he spoke

21 to Mr. Lichtenstein about it.

22 So, I'm certainly -- it's relevant

23 in respect to this management company

24 managing this hotel in the future.

25 MR. KELLEY: I'm not going to

1 MICHAEL LICHTENSTEIN

2 respond, I'll reserve, but I've already
3 indicated -- Mr. Lichtenstein, go ahead
4 and answer this question.

5 A The examiner's report has been
6 taken apart and proven to be a series of lies,
7 falsehoods, and nonsense and completely
8 self-contradictory.

9 So, the examiner's report is not
10 worth anything, and whatever conclusion the
11 examiner comes to is worthless.

12 Mr. Rauch, while I have not read
13 his deposition, I am certain that he did not
14 say that there was tax evasion.

15 I am pretty certain that you
16 harassed him and bamboozled him and put words
17 in his mouth and made it sound like he said
18 something which he didn't mean to say at all,
19 because that's what you do.

20 And Mr. Rauch doesn't have that
21 much experience with depositions.

22 So, both of your previous
23 statements are false.

24 And the answer is that there was
25 no tax evasion, and you are just trying to

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MICHAEL LICHTENSTEIN

create a story line because you're pretty much
losing the case.

MR. FREEDMAN: I move to strike
as unresponsive.

Q If you would confine yourself to
my specific question, sir.

A I responded to your question.

Q You asked me about the --

MR. FREEDMAN: Move to strike,
unresponsive.

A You asked me about the
examiner's statement, and you asked me about
Mr. Rauch's statement, and I responded --

MR. FREEDMAN: Move to strike.

A -- and I responded to the two
statements which you claim to quote.

MR. FREEDMAN: Again, I move to
strike as unresponsive.

Q There is no question pending.
You are just using up my time now.

What's the status of the payment
of the occupancy taxes? In other words, what's
the status of those negotiations?

A Can you please repeat the

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- Lichtenstein MC, p. 121, l. 2 through p. 130, l. 11 (video – p. 125, l. 17 through p. 129, l. 24 only)

Page 121

1 MICHAEL LICHTENSTEIN

2 Q So, why were there, for

3 instance, 14 transfers between Northside and

4 the management company in any given day of

5 magnitudes of \$100,000?

6 What would be that purpose?

7 A To fund the operations of the

8 hotel. I'm not sure what you are referring to,

9 but some days there were many transfers and

10 some days there were not a lot of transfers, as

11 was necessary.

12 Q Why wouldn't you make one single

13 transfer?

14 Why would you have to make 14

15 transfers between the same parties in one day?

16 A I have no clue what you are

17 referring to.

18 And I am assuming that it was

19 necessary either because they came in from

20 different accounts or they were going to

21 different accounts or they were going for

22 different purposes.

23 Q How about if it's the same

24 account, same exact account.

25 A Or -- I would appreciate --

MICHAEL LICHTENSTEIN

1
2

Q Sir, this is in the reports that
you provided to rebut the examiner's report.

4

A I would appreciate if you
stopped interrupting my answer.

6

Q I would appreciate if you could
answer my specific question.

8

A I was in the middle of that.

9

MR. KELLEY: I think he's
trying -- I understand you're pressed
for time, but please allow him to
finish.

13

A I was in the middle of answering
your question.

15

This could have been coming in
in smaller pieces for many different reasons.

17

Q Like what?

18

A Either --

19

Q Like what?

20

A Either the funds were coming in
that way from different accounts, or they were
going to different accounts, or they were
needed for different purposes.

24

It can be a million and one
different explanations for why this was

25

1 MICHAEL LICHTENSTEIN

2 happening this way.

3 Q So what books and records would
4 we go to to figure out the reasons why, for
5 instance, 14 transfers were made between the
6 management company and Northside from single
7 accounts in one day?

8 How do we -- what books and
9 records do we go to to figure out why that
10 happened?

11 A Well, one simple answer can be
12 the money came into the management company in
13 bits and pieces.

14 That can be a very simple answer
15 right there, which is probably what happened
16 most of the time.

17 Not all the money cleared in the
18 accounts in one shot, so, your question is
19 really, not really a question.

20 Q And then why would the money
21 come in from the management company to
22 Northside and then Northside turn around and
23 send a portion of that money right back to the
24 Debtor?

25 A I don't know what you are

MICHAEL LICHTENSTEIN

referring to.

Q It's in your reports.

A You ask me about specific -- you would have to ask me about a specific transaction and I can respond.

Q It's in the reports that you just provided two weeks ago.

A We gave you a report of 500 pages with I think about 10,000 transactions, so I do not remember any transactions specifically.

If you have a question about a specific transaction, and are not just asking for the sake of posing and making a show, then you can point out specific transactions and I can get back to you with responses.

Q How about this, March 12, 2018, 10 separate transactions going from the management company to Northside totaling \$76,677.73.

Why would that be?

A The simple answer is that the money didn't clear, in the management company, in bits and pieces, but I would have zero clue

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MICHAEL LICHTENSTEIN

1
2 now about something that happened five years
3 ago.

4 We will be happy, if you send us
5 that transaction, those 14 transactions or 10
6 transactions, to come back with an answer.

7 Q If you go to page 2910 in
8 Exhibit 10 that we are just putting up.

9 A Exhibit -- which exhibit?

10 Q It will be Exhibit 10.

11 8, sorry.

12 (The above described document was
13 marked Exhibit 8 for identification as of
14 this date.)

15 A Actually I am in Exhibit 10. Is
16 it 8 or -- sorry, 8.

17 Q So Exhibit 8, I'm sorry, sir.

18 A Um-hum.

19 Q So, go to page 2910.

20 A It 2910, yes.

21 Q You see in the middle of the
22 page between March 12, 2018 and March 14, 2018,
23 10 transactions of funds going from --

24 A March which date, March?

25 Q March 12, 2018, it's the middle

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MICHAEL LICHTENSTEIN

1
2

of the page.

3

A Yes.

4

Q You will see 10 transactions

5

between March 12, 2018 and March 14, 2018 --

6

A Um-hum.

7

Q -- of \$76,677.73 going from the

8

management company to the Northside account?

9

A I have no clue now, but I can

10

get back to you with answers.

11

Q What are you going to look at,

12

sir?

13

A At the bank statements, at

14

the --

15

Q What documents do you have that

16

will show for each of these transactions, for

17

instance, the purpose of it?

18

A I'm going to look up in the

19

books and records and come back with answers.

20

Q What particular -- what specific

21

books and records are you going to look at?

22

A The books and records -- I don't

23

know now, I'm going to see what is involved in

24

this, what are the bank statements, if there

25

are invoices, if there is any explanation, and

MICHAEL LICHTENSTEIN

1
2

I'll get back to you.

3

Q In compiling this report you

4

didn't under undertake that analysis, right,

5

the purpose of the transactions?

6

A Of course we did.

7

Q Where is that report, where is

8

that report?

9

A That report is in the books and

10

records. It's relevant to the loans and

11

exchanges, every breakdown of every \$287.73,

12

what it was used for, or the \$180.

13

I mean, there are basically 25

14

transactions just on this page, and it's

15

irrelevant what exactly every dollar was used

16

for for showing a loans and exchanges report.

17

So your question is misleading.

18

Q And then the next date March 15,

19

2018, \$60,000 goes back from Northside to the

20

management company.

21

Why?

22

A \$60,000, which transaction goes

23

back from --

24

Q The next day, March 15, 2018,

25

\$60,000 goes back from Northside to the

Page 128

MICHAEL LICHTENSTEIN

1
2

management company.

3

Why?

4

A Well, the simple answer is

5

because it was a line of credit that was going

6

back and forth, but that's without even knowing

7

what it is.

8

I would have to look at it and

9

get back to you.

10

Q Page 2938 --

11

A 29 what?

12

Q 38.

13

Are you there?

14

A I am, I am going to 38 -- I'm

15

not on 2938, no.

16

2937, 2938.

17

Q On the bottom of the page,

18

starting October 10, 2019, going over to the

19

next page, 2939, just on October 10, 2019 there

20

are 14 transfers from the management company to

21

Northside totaling \$112,655.

22

Why would that happen?

23

A I can look into it and get back

24

to you.

25

Q And you can't tell me exactly

MICHAEL LICHTENSTEIN

1
2

what you are going to look at, right?

3

A I said I'm going to look at the

4

books and records.

5

Q What specific book or what

6

specific record do you believe will provide you

7

the information relating to the purpose of each

8

of those transfers?

9

A The books and records are going

10

to provide the information, and I will get back

11

to you with the information.

12

Q Specifically what book or what

13

record are you going to look at? That's all

14

I'm trying to understand, sir.

15

A Books and records is a general

16

description of records, and you are asking me

17

now to answer you about records from 2019,

18

which is basically three years ago.

19

I have no clear idea. I'm going

20

to go and look at the records and see what the

21

breakdown is and what the explanation is.

22

Q Are you sure there is an

23

explanation in those books and records, sir?

24

A Yes, I'm sure.

25

Q So if Mr. Rauch and Mr.

Page 130

MICHAEL LICHTENSTEIN

1
2 Kirschner told me that there is none, they are
3 wrong and you are right?

4 A I have no clue what Mr. Rauch
5 and Mr. Kirschner told you.

6 Q I am telling you.

7 A I am pretty positive that you
8 manipulated them and harassed them and put
9 words in their mouth.

10 And I will get back with answers
11 to these questions.

12 MR. FREEDMAN: Okay. Other than
13 reserving my rights, I have nothing
14 further.

15 MR. KELLEY: All right, let's
16 close down the deposition.

17 We are going to reserve our
18 questions to time of trial, obviously, in
19 accordance with Judge Drain's rules.
20 Thanks.

21 MR. FREEDMAN: I don't know what
22 that means.

23 THE VIDEOGRAPHER: If there are
24 no objections I will close out the video
25 record.

V. **Post-Petition Conversion of Hotel Occupancy Taxes**

a. **Exhibits**

- BSP Exhibit 119 – Report of Examiner, Eric M. Huebscher [ECF No. 418]
- BSP Exhibit 130 – Report of Examiner, Eric M. Huebscher [ECF No. 465]
- JOINT EXHIBIT No. 2 – Chase Statement - X9022 dated 7/30/2016
- JOINT EXHIBIT No. 3 – Chase Statement - X9022 dated 1/31/2017
- JOINT EXHIBIT No. 4 – Chase Statement – X8662 dated 1/31/2017
- BSP EXHIBIT No. 26 – Bank of America Statement - X4102 dated 2/29/2020
- BSP EXHIBIT No. 31 – Bank of America Statement – X2855 dated 4/30/2020
- JOINT EXHIBIT No. 14 – Bank of America Statement – X0102 dated 4/30/2020
- BSP EXHIBIT No. 33 – Bank of America Statement – X0102 dated 5/31/2020
- BSP EXHIBIT No. 36 – Bank of America Statement – X0102 dated 6/30/2020
- BSP EXHIBIT No. 38 – Bank of America Statement – X0102 dated 7/31/2020
- BSP EXHIBIT No. 39 – Bank of America Statement – X0102 dated 8/31/2020
- BSP EXHIBIT No. 40 – Bank of America Statement – X0102 dated 9/30/2020
- BSP EXHIBIT No. 41 – Bank of America Statement – X0102 dated 10/31/2020
- BSP EXHIBIT No. 42 – Bank of America Statement – X0102 dated 11/30/2020
- BSP EXHIBIT No. 167 – Chase Bank Statements (produced by bank through Subpoena)

- BSP EXHIBIT No. 168 – Bank of America Statement (produced by bank through subpoena)
- BSP EXHIBIT No. 179 – Bank of America Statements – X4400 for the period 2020-2021
- BSP EXHIBIT No. 180 – Bank of America Statements – X4662 for the period 2018-2021

b. Testimony

1. Lichtenstein

- Lichtenstein p. 104, l. 9 through p. 113, l. 17 (video - p. 104, ll. 9-22; p. 108, l. 3-19 p. 111, ll. 5-10 only)

Page 104

1 M. LICHTENSTEIN

2 A. I've reviewed Mr. Huebscher's bogus

3 report and supplemental report, and I have drafted a

4 response to his bogus report and supplemental

5 report.

6 Q. Anything else, sir?

7 A. That's pretty much it.

8 Q. Thank you.

9 And speaking of Mr. Huebscher's report,

10 there's a reference on page 3 to the transfer of

11 \$252,100 from a management company account at Bank

12 of America, account 4400, to a North Side

13 Management, LLC, account.

14 And when I took Mr. Rauch's deposition,

15 he indicated and confirmed that those were funds

16 collected and segregated from hotel occupancy tax

17 collections.

18 Is that your understanding as well,

19 sir?

20 A. Those were funds of the debtor that were

21 used for expenses, and the matter of the occupancy

22 tax is being settled now with New York City.

23 Q. Let's go back a second.

24 The \$252,100, those were funds that

25 were collected as hotel occupancy taxes, correct?

M. LICHTENSTEIN

1
2

A. Not necessarily. I'm not sure about that. Money doesn't have a bar code, so I'm not sure what your presumption is.

5

Q. Sorry. Go ahead. Finish.

6

A. The hotel occupancy tax matter is being settled now with New York City.

8

Q. That's not my question, sir, so I would ask, because we have limited time and I really want to get this done -- as I told Mr. Kelley before we began, I have a commitment to see my son who's home from college who I have not really had the opportunity to see at 6:30 tonight, so I want to get through this.

15

So Mr. Rauch, your financial director and director of finance, testified last week that that \$252,100 constituted collected hotel occupancy taxes.

19

Are you contesting his testimony in that regard, sir?

21

A. I am not contesting any of his testimony. I did not read his transcript. I don't know what he said.

24

All I am saying is that I don't remember now what this 250,000 -- as it being

25

M. LICHTENSTEIN

1
2 hotel occupancy tax funds, what that even means.
3 Money doesn't have a bar code, so I'm not sure
4 where your presumption is even coming from, how
5 you're asking such a question.

6 Q. That's what Mr. Rauch testified to, and
7 he said that money was collected as hotel occupancy
8 tax the dollars a night plus the 785 percent of the
9 revenue of the room, and it was segregated into that
10 account, 4400.

11 Do you have a reason to contest his
12 testimony in that regard?

13 A. I would appreciate if you stop putting
14 words in my mouth, which you have a strong tendency
15 to do. I'm not contesting anything. I said that I
16 don't have any clue what this money was. I said I
17 did not read Jeremy Rauch's transcript.

18 I don't necessarily trust you of all
19 people to trust you that you didn't put words in
20 Jeremy Rauch's mouth.

21 What I'm saying is that this \$250,000
22 was there and we are resolving any occupancy tax
23 issues as part of a settlement with New York City.
24 That's all I am saying.

25 Q. Do you agree that that \$252,100 was swept

M. LICHTENSTEIN

1
2 out of account 4400 into a North Side Management,
3 LLC, account two days after filing the bankruptcy
4 petition in this case?

5 A. Our debtor's weekly payroll is between
6 200,000 and \$300,000 a week on a weekly basis. So
7 the obsession of Huebscher and you with this
8 \$250,000, which is exactly one week's payroll in
9 this business, is quite remarkable.

10 And if that is the only thing that
11 Huebscher found in his entire bogus report, which
12 I'm not accepting it as true -- if this is the
13 only thing he could find, this \$250,000, after six
14 months of investigation, then we are in very good
15 shape.

16 Q. Again, sir, I would ask that you listen
17 to my question and answer my question.

18 A. I just answered it.

19 (Simultaneous crosstalk.)

20 MR. KELLEY: One at a time.

21 Go ahead, Gary.

22 MR. FREEDMAN: Yes. Thank you.

23 Q. I'm going to redact my question I had
24 asked you and ask my specific question. I'm going
25 to read back my question, and I ask you to answer my

1 M. LICHTENSTEIN

2 specific question.

3 Do you agree that that \$252,100 was
4 swept out of account 4400 into a North Side
5 Management, LLC, account two days after the
6 bankruptcy petition was filed in this case?

7 MR. KELLEY: Objection to the form of
8 the question.

9 You can go ahead and answer.

10 A. I don't remember exactly the day when it
11 was swept. I wouldn't describe it as being swept.
12 That's a wrong description.

13 As I said, it was used for expenses,
14 and it was -- and all these issues of the
15 occupancy tax are being resolved with New York
16 City as a general settlement of the occupancy tax
17 issues and the real estate tax issues, which New
18 York has overbilled us by \$5 million of real
19 estate taxes.

20 Q. Once again, you're not answering my
21 question. Listen to my question, keep it in mind,
22 and answer my specific question.

23 Was it you, sir, that gave the
24 direction to transfer the \$252,100 out of the 4400
25 into the North Side Management, LLC, account?

M. LICHTENSTEIN

MR. KELLEY: One, I'm going to object to the sidebar. I didn't get an opportunity to do it. I don't think those are appropriate.

And two, Gary if you're representing that's the specific transfer, it may be helpful to put the document as to the amount, because I'm not sure he's adopting your representation, that was the specific amount being wired amount.

Because that's what he said in his prior answer, so if there's a document to show the amount, because -- well, I'm not going to elaborate further, but if there's a document that you could put in front of him if you want him to accept that premise that was the transferred, that specific amount, I think that would be important, based on his prior response.

Q. Sir, would it be helpful to put up page 3 of the examiner's report so you can see the exact amount referenced therein?

A. If you want, go ahead.

Q. If you're in dispute of the amount, I'm

M. LICHTENSTEIN

happy to put it up. If you have it in mind, and since you just looked at it, the first thing you said you did in preparing for the deposition was looking at the examiner's report, the supplement, your response in drafting a new response, I thought you may have it in mind. If you don't, I'm happy to put it up. I just want to move it along.

MR. FREEDMAN: The only reason I mentioned it is you mentioned a specific dollar figure.

Q. Mr. Lichtenstein?

A. As I said, the examiner's report is chockfull of lies. It has a lot of facts in it that are not true. I remember him mentioning the amount of 250, 252,000.

You're welcome to put it up on the screen if I need to see. It's not going to change my answer, which is that all these issues of the occupancy tax are being resolved with New York now, and it's irrelevant.

Q. It's not irrelevant to me, and I don't think it's going to be irrelevant to the Court. But my simple question, so I can move on, sir: Are you the one that gave direction for the transfer of

M. LICHTENSTEIN

those funds?

A. I will assume responsibility for whoever gave direction, yes.

Q. That wasn't my question, sir. My question is: Did you give the direction?

A. I do not remember now who gave direction to who two years ago and who did what exactly two years ago. I said I will assume responsibility for any such action.

Q. Well, there are --

MR. FREEDMAN: Strike that.

Q. First of all, it was on or about February 25, 2021, so it wasn't two years ago. It was less than -- it was less than a year ago.

But all I want to know, sir, is do you know either who made the transfer or who authorized the transfer? Simple question. I'm not asking for responsibility. I just want to know who did it.

A. As I said, I do not remember now from a year ago or two years ago or nine months ago. I wouldn't remember who said what to who and who pressed which button.

As I said, our weekly payroll is about

1
2 M. LICHTENSTEIN

3 this amount on average. This is a business
4 running between 20 and 25 million a year in
5 revenue, so 250,000 is not a huge amount that I
6 will remember from a year ago who said what to
7 who.

8 I would assume responsibility as the
9 owner and manager of the management company and
10 the owner of the debtor for whatever transfers
11 were made. Yes.

12 Q. So you said two or three times the money
13 was transferred to cover payroll?

14 A. I did not --

15 Q. You didn't say that?

16 A. I said expenses. I did not say payroll.
17 I said that you're obsessing about an amount of
18 \$250,000 when that is only a payroll weekly average
19 cost. The weekly average expenses are -- run
20 between 300 and 350,000 a week.

21 This obsession with \$250,000, if that
22 is the only thing that you have, then we are
23 absolutely in great shape and it just shows what
24 an amazing operation we're running.

25 Q. Sir, you're being extremely
argumentative, and I would appreciate, again, if you

M. LICHTENSTEIN

1
2 stopped and just answered the question.

3 A. I'm going to stop you right there.

4 Please do not say false statements. I'm responding
5 to your questions and I'm responding and providing
6 information.

7 You don't like the answers, and you
8 will not like most of my answers, actually,
9 because you are representing a lying, thieving
10 entity who is trying to steal my building away
11 from me.

12 So you will not like most of my
13 answers, and I will continue answering with the
14 truth, which you will not like.

15 Q. So --

16 A. Please do not say I'm not responding to
17 your questions.

18 MR. KELLEY: I appreciate that response
19 from both of you all, but I'm going to say
20 Gary, please, I will instruct my witness. If
21 you have an objection, you're familiar with
22 the protocols. Please assert it or exercise
23 it, but please proceed with the questions.
24 But please do not give instruction to my
25 witness.

- Lichtenstein p. 115, p. 17 through p. 117, l. 8 (video - p. 115, l. 17 through p. 117, l. 4 only)

Page 115

M. LICHTENSTEIN

don't think he's being nonresponsive. I don't think -- is he answering more information provided? Yes. But there's a process for that, Gary. I'm asking you to focus on the Q&A and let's get through it. There will be answers in here, and let's keep moving.

MR. FREEDMAN: I'm telling you, Charles, I'm not going to put up with narrative responses that are unresponsive to the questions. I'm not doing it.

MR. KELLEY: Object to the responsiveness and we can take that to the Court. I'm fine with that, but please proceed.

Q. Whose expenses did that \$250,000 go to pay?

A. I don't remember now.

Q. So you know it was transferred to pay expenses, but you can't tell me whose expenses they went to pay; is that fair?

A. I don't remember now a year later which expenses exactly it paid. That's all I'm saying.

Q. Was it transferred out to pay expenses of

M. LICHTENSTEIN

1
2

the debtor?

3

A. Of course.

4

Q. So why were the funds transferred to an

5

account in the name of North Side Management, LLC?

6

A. Because they always went through the

7

North Side account. I don't understand the

8

question.

9

Q. All the monies to pay expenses of the

10

debtor were transferred to North Side Management,

11

LLC?

12

A. I don't remember which account exactly it

13

was transferred to. And, as I said already --

14

Q. All I'm trying to understand now, sir, is

15

if the \$252,000 was transferred out to pay expenses

16

of the debtor, why would you be transferring them to

17

an account in the name of North Side Management,

18

LLC?

19

A. I don't remember now which account

20

exactly it was transferred to, and I don't remember

21

now the exact trail of how the money went.

22

You're asking me questions about wires

23

from a year ago, so I don't know the answers to

24

exactly what went where and what expenses went. I

25

don't remember now exactly what went where.

Page 117

M. LICHTENSTEIN

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As I said, we resolved with the City of
New York all occupancy tax and real estate tax
matters, and that's resolving all these issues.

MR. FREEDMAN: Objection. And move to
strike the balance of that answer as
unresponsive, as have many of your answers
been, sir.

Q. What the status of the negotiations with
Lockwood?

A. I'm not sure what that question even
means.

Q. Well, we're two weeks away from the
confirmation hearing. Have the documents with
Lockwood been finalized?

MR. KELLEY: I think he's looking for a
little context. Sorry, Gary.

MR. FREEDMAN: Context in what? I mean
--

MR. KELLEY: You're referring to the
funding?

Q. You don't understand what I'm referring
to when I say Lockwood, sir?

A. You're asking an overly broad question.
But the answer to your overly broad question is

2. Moskovits

- Moskovits, p. 105, l. 25 through p. 107, l. 6 (video)

Page 105

1 TOBY MOSKOVITS

2 design and development of these other hotels,

3 who are they?

4 A Michael Lichtenstein and myself.

5 Q Well, you're not an employee of

6 the management company, are you?

7 We just went through this?

8 A We do this as owners, okay? We

9 do this as owners, that's a big portion of our

10 business, is developing and sourcing additional

11 projects for development within the hotel

12 industry.

13 Q And other than you and

14 Mr. Lichtenstein --

15 A Not as an employee, as an owner.

16 Q (Continuing) -- who else at the

17 management company level have been involved in

18 the design and development of the hotel


19 properties?


20 MS. PARLOVECCHIO: Objection.

21 A Mr. Lichtenstein and myself.

22 MS. PARLOVECCHIO: Objection to

23 form.

24 A  Michael Lichtenstein and myself.

25 Q  And looking at the next bullet

TOBY MOSKOVITS

1
2 point on page 5 of 36, what is Northside
3 Management LLC?

4 A That's an entity through which
5 Michael Lichtenstein and I do business.

6 Q And what business does Northside
7 Management LLC do?

8 A It's in the related real estate
9 management industry.

10 Q And what properties?

11 A Northside is an LLC, I'm not
12 sure if it has actual -- if it has an actual
13 operating business, I would have to confirm.

14 Q And why did the management
15 company wire \$252,100 to Northside Management
16 LLC on February 25, 2021?

17 A I don't have that information in
18 front of me, so I can't tell you. I would have
19 to go check the record.

20 Q And in February 2021 was
21 Northside Management LLC involved in any actual
22 business enterprise?

23 A I would have to check the
24 records.

25 Q You have no recollection as you

Page 107

1 TOBY MOSKOVITS

2  sit here today, correct?

3 A We have dozens of LLCs, I would
4 have to get more information with that specific
5 transaction in order to respond to this
6 question.

7 Q And who was it that authorized
8 the transfer of the \$350,000 from the
9 management company to the -- to Northside
10 Acquisition Partners LLC?

11 A It wasn't me, so I'm assuming
12 that it was Michael Lichtenstein.

13 Q And who authorized the transfer
14 of \$252,100 from the management company to
15 Northside Management LLC on February 25, 2021?

16 A I have to check the records.
17 I'm not familiar with that, I need to check the
18 records.

19 You asked me very specifically
20 about the EIDL, but on this transaction I would
21 have to check the records.

22 Q If you flip to page 7 of 36,
23 please.

24 A No. Okay.

25 Q You will see in the second

- Moskovits, p. 107, ll. 13-18 (video)

Page 107

1 TOBY MOSKOVITS
2 sit here today, correct?
3 A We have dozens of LLCs, I would
4 have to get more information with that specific
5 transaction in order to respond to this
6 question.
7 Q And who was it that authorized
8 the transfer of the \$350,000 from the
9 management company to the -- to Northside
10 Acquisition Partners LLC?
11 A It wasn't me, so I'm assuming
12 that it was Michael Lichtenstein.
13 Q And who authorized the transfer
14 of \$252,100 from the management company to
15 Northside Management LLC on February 25, 2021?
16 A I have to check the records.
17 I'm not familiar with that, I need to check the
18 records.
19 You asked me very specifically
20 about the EIDL, but on this transaction I would
21 have to check the records.
22 Q If you flip to page 7 of 36,
23 please.
24 A No. Okay.
25 Q You will see in the second

3. Lichtenstein MC

- Lichtenstein p. 39, l. 15 through p. 41, l. 7 (video)

Page 39

1 MICHAEL LICHTENSTEIN

2 providing any information about the EIDL loan

3 or the management company that is not related

4 to the Debtor.

5 Q The \$252,100 that the management

6 company had segregated in occupancy tax funds,

7 you know what I'm talking about in that regard,

8 sir?

9 A I responded already in the

10 previous deposition on that matter, and I will

11 not be responding on that matter again.

12 Q And those funds were transferred

13 a couple of days after the bankruptcy filing in

14 this case to Northside Management LLC, correct?

15 A I will only respond to say that

16 it was transferred at the same time that the

17 bankruptcy filing was done, and I will not be

18 responding more, since we already had a half

19 hour discussion about this topic.

20 Q And what did Northside

21 Management LLC do with the \$252,100, sir?

22 A Actually I will correct the

23 record.

24 I think we had a 45 minute

25 conversation about this topic already, and I

MICHAEL LICHTENSTEIN

1
2 will not be responding any further on this
3 topic.

4 Q The funds that were transferred
5 to Northside Management LLC never found their
6 way back into the management company, correct?

7 A As I said already, we had a long
8 conversation about this topic, and I will not
9 be responding any further about this topic.

10 Q And they weren't used for any
11 purposes related to the Debtor, correct?

12 A That is not necessarily a true
13 statement that you made, which you tend to make
14 many false statements, and I will not respond
15 any further about this topic.

16 Q Well, tell me about any use of
17 the \$252,100 in respect to the Debtor's
18 business.

19 A As I said, we already had a long
20 conversation about this topic, and I'm not
21 going to respond about it.

22 Q And just so we are clear, for
23 every question that you are refusing to answer,
24 I'm going to ask that the court invoke a
25 negative inference or otherwise strike your

Page 41

MICHAEL LICHTENSTEIN

1
2

testimony.

3

4

I don't want to debate it, I'm
just letting you know.

5

6

7

A Since I already discussed this
with you for at least 45 minutes, there is
nothing more to say about this topic.

8

9

10

11

12

Q Unfortunately, sir, what I
provided to your counsel last Friday pursuant
to a discovery stipulation, I'm trying to come
to an agreement on the use of prior testimony,
and being adopted by the management company.

13

14

15

16

Although Mr. Kelley told me
before we went on the record he believes he
will be able to do it, he hasn't received your
authorization to do that yet.

17

18

So we are not there quite yet,
sir.

19

20

A I have no clue what you just
said, but we can move on.

21

22

Q Has the management company filed
a tax return for 2016?

23

24

25

A I think so.

Q Do you have it in your
possession?

VI. **Prepetition Use of Hotel Occupancy Taxes**

a. **Exhibits**

- JOINT EXHIBIT 27 - NYC-HTX Hotel Room Occupancy Tax Return - The Williamsburg Hotel BK LLC for the periods: 12/01/2016-02/28/2017; 03/01/2017-05/31/2017; 06/01/2017-08/31/2017; 09/01/2017-11/30/2017; 2/01/2017-02/28/2018; 03/01/2018-05/31/2018; 06/01/2018-08/31/2018; 09/01/2018-11/30/2018; 12/01/2018-02/28/2019; 03/01/2019-05/31/2019; 06/01/2019-08/31/2019; 09/01/2019-11/30/2019; 12/01/2019-02/28/2020; 03/01/2020-05/31/2020; 06/01/2020-08/31/02020; 09/01/2020-11/30/2020; 12/01/2020-02/28/2021; 03/01/2021-05/31/021; 06/01/2021-08/31/2021; 09/01/2021-11/30/2021
- JOINT EXHIBIT 33 – Checks drawn to TD Bank Account for the Williamsburg Hotel to the New York City Department of Finance
- JOINT EXHIBIT 58 - NYC-HTX Hotel Room Occupancy Tax Return - The Williamsburg Hotel BK LLC for the period: 12/01/2021 - 2/28/2022
- BSP Exhibit 84 – Proof of Claim #14-1 filed by NYC Department of Finance
- BSP Exhibit 85 – Proof of Claim #18-1 filed by NYC Department of Finance
- BSP Exhibit 92 – Debtor Objection to Proof of Claim #14-1 [ECF No. 302]
- BSP Exhibit 97 – NYC Department of Finance Response [ECF No. 367]
- BSP Exhibit 119 – Report of Examiner, Eric M. Huebscher [ECF No. 418]
- BSP Exhibit 130 – Report of Examiner, Eric M. Huebscher [ECF No. 465]
- JOINT EXHIBIT No. 2 – Chase Statement - X9022 dated 7/30/2016
- JOINT EXHIBIT No. 3 – Chase Statement - X9022 dated 1/31/2017
- JOINT EXHIBIT No. 4 – Chase Statement – X8662 dated 1/31/2017
- BSP EXHIBIT No. 26 – Bank of America Statement - X4102 dated 2/29/2020

- BSP EXHIBIT No. 31 – Bank of America Statement – X2855 dated 4/30/2020
- JOINT EXHIBIT No. 14 – Bank of America Statement – X0102 dated 4/30/2020
- BSP EXHIBIT No. 33 – Bank of America Statement – X0102 dated 5/31/2020
- BSP EXHIBIT No. 36 – Bank of America Statement – X0102 dated 6/30/2020
- BSP EXHIBIT No. 38 – Bank of America Statement – X0102 dated 7/31/2020
- BSP EXHIBIT No. 39 – Bank of America Statement – X0102 dated 8/31/2020
- BSP EXHIBIT No. 40 – Bank of America Statement – X0102 dated 9/30/2020
- BSP EXHIBIT No. 41 – Bank of America Statement – X0102 dated 10/31/2020
- BSP EXHIBIT No. 42 – Bank of America Statement – X0102 dated 11/30/2020
- BSP EXHIBIT No. 167 – Chase Bank Statements (produced by bank through Subpoena)
- BSP EXHIBIT No. 168 – Bank of America Statement (produced by bank through subpoena)
- BSP EXHIBIT No. 179 – Bank of America Statements – X4400 for the period 2020-2021
- BSP EXHIBIT No. 180 – Bank of America Statements – X4662 for the period 2018-2021

b. Testimony

1. Moskovits

- Moskovits, p. 238, l. 18 through p. 259, l. 3 (video p. 238, l. 18 through p. 242, l. 24; p. 247, l. 13 through p. 248, l. 8; p. 249, l. 14 through p. 251, l. 6; p. 258, l. 2 through p. 258, l. 19 only)

Page 238

1 TOBY MOSKOVITS

2 of the operations.

3 So I'm assuming that they are a

4 sophisticated party, they have done many loans,

5 had they had an issue with this structure of

6 management and payment and collection of

7 revenue, they would have made it clear to us

8 prior to signing off and closing a loan.

9 Q We are going to get to the

10 management and the management agreement in a

11 moment.

12 Okay, we will take your

13 testimony and we will use it at confirmation

14 for what its worth.

15 Do you understand that the

16 occupancy --

17 MR. FREEDMAN: Well, strike that.

18 Q To the best of your knowledge,

19 was the occupancy tax collected?

20 A I can't confirm that, because I

21 wasn't involved in it, but I am aware that at

22 least during one period the city -- during

23 COVID there were limitations on the

24 requirement, but I was not involved personally

25 in collecting this tax.

1 TOBY MOSKOVITS

2 Q As the Debtor's representative
3 here today, what did you attempt to learn prior
4 to today's deposition in respect to whether or
5 not the management company, in fact, collected
6 the occupancy tax?

7 MS. PARLOVECCHIO: Objection.

8 A I have confirmed, as I stated
9 earlier, that all the tax returns have been
10 filed.

11 We have worked hard to get that
12 done, make sure that was done, and that the
13 postpetition amounts have been paid and that
14 there are negotiations and discussions on
15 resolving a payment plan to make payment on the
16 balance owed.

17 Q All right, listen to my specific
18 question.

19 During the operations of the
20 hotel, what, if anything, did you do as the
21 owner of the hotel to make certain that the
22 hotel's obligation to collect the occupancy tax
23 was being fulfilled, if anything?

24 A I was not involved in that. I
25 was actually very focused on another issue we

Page 240

1 TOBY MOSKOVITS

2 had with the City, which is the city's --

3 Q Stop, stop, stop, you are
4 anticipating something else again.

5 A Okay, then my response is that
6 this was handled by Michael Lichtenstein on the
7 management side of the business, I was not.

8 Q And who handled it on behalf of
9 or on the side of the Debtor?

10 A This was being handled by the
11 management company.

12 Q But who on the side of the
13 Debtor was making certain that these
14 obligations were being fulfilled?

15 A This was being handled by the
16 management company.

17 Q Okay, ma'am, we are going around
18 in circles.

19 You are the management company
20 as well, right?

21 MS. PARLOVECCHIO: Objection.

22 Also I just want to note, I don't know
23 if you realize, Toby, that your screen
24 is off.

25 I think maybe you're --

Page 241

TOBY MOSKOVITS

1
2

THE WITNESS: I am looking at the

3

exhibit.

4

MS. PARLOVECCHIO: That's what I

5

figured.

6

MR. FREEDMAN: Thank you for

7

that.

8

Q You understand that the

9

occupancy tax collected is a trust fund tax?

10

MS. PARLOVECCHIO: Objection,

11

calls for a legal conclusion.

12

Q I didn't ask her conclusion, I

13

asked what her understanding is.

14

Is that your understanding,

15

ma'am?

16

A I think the name of what it is

17

speaks for itself.

18

It's a tax that is collected,

19

yes.

20

Q You know what trust fund tax is,

21

correct?

22

A No, I'm not familiar with that

23

term.

24

Q Okay, you're telling me that as

25

the owner of a what you value a \$113 million

TOBY MOSKOVITS

1
2 hotel in Brooklyn, New York, you don't know
3 whether or not the occupancy tax collected at
4 that hotel is to be maintained as a trust fund
5 tax; is that your testimony?

6 MS. PARLOVECCHIO: I object to
7 form.

8 A My testimony is that everything
9 related to the collection of the occupancy tax
10 was handled -- was under the auspices of
11 Mr. Lichtenstein's work at the management
12 company.

13 Q Not my question, ma'am?

14 A That is my testimony.

15 Q I'm asking as the representative
16 of the Debtor here today, in respect to
17 occupancy tax, and I am looking at what your
18 attorney sent to me at 4:30 yesterday, that's
19 what it says, are you telling me that you have
20 no understanding one way or the other whether
21 occupancy taxes collected at the hotel are
22 trust fund taxes?

23 A What I am telling you is that
24 Michael Lichtenstein handled the matters
25 relating to the occupancy tax.

Page 243

TOBY MOSKOVITS

1
2 I've heard the term trust fund
3 tax, I'm not sure if you are asking me a legal
4 question or a factual question, I'm giving you
5 a practical response.

6 Q I'm asking as the owner of the
7 hotel.

8 A I have also said repeatedly --
9 what I said repeatedly is that all of the tax
10 returns have been caught up to date, and the
11 postpetition amounts have been paid in full,
12 and we are in discussions with the city on the
13 payment plan that we hope to resolve shortly to
14 get the balance caught up.

15 Q Move to strike as unresponsive.
16 We are going down that slippery slope again,
17 ma'am.

18 I'm just trying to understand as
19 the representative of the Debtor, and one of
20 the people who are the sponsors of the plan,
21 whether you understand the very crucial issue
22 that the tax -- the occupancy taxes collected
23 at the hotel are trust fund taxes.

24 And you seem either to not know
25 the answer to that question or --

TOBY MOSKOVITS

1
2

A Sir, you are asking the
question -- every time you ask the question,
it's a different question.

5
6

You have asked a series of
questions.

7
8

Q Or you are refusing to answer
the question?

9
10

A You said I am aware of the fact
that it is a tax we are collecting on behalf of
the city, I said that.

12
13

You asked a different question
every time. You said -- you are asking the
question differently every time.

15
16

You asked it, then you asked me
if I --

17

Q Stop yelling at me, please.

18

A I don't yell. I'm speaking in a
very measured voice. The yelling is only
happening in one direction on this call.

21

Q You are yelling at me.

22

Can you just tell me one way or
the other whether you know whether or not the
occupancy tax is designated as a trust fund
tax?



1 TOBY MOSKOVITS

2 A What time frame are you asking
3 this about?

4 I told you that all the taxes
5 collected in the postpetition period have been
6 paid.

7 Q Not my question, ma'am.

8 A The period that were not paid
9 prior to that, those tax returns are filed.



10 Q Not my question. Trust fund
11 taxes, like sales tax, you know sales tax
12 collected are trust fund taxes, right?

13 A Are you asking -- I apologize,
14 I'm not understanding your question.

15 Are you asking me if I
16 understand what the meaning of that word is, or
17 if I know it's being collected.

18 Please clarify your question.

19 Q Sure.

20 Do you understand as an owner of
21 the hotel and the corporate representative of
22 the hotel here on item 14, that the occupancy
23 taxes collected by the hotel are designated as
24 trust fund tax?

25 A Is the question asked of me,

1
2

TOBY MOSKOVITS

asked as a representative of the Debtor, you
said the hotel.

4
5

Is your question directed to the
management company?

6
7
8

I responded earlier I'm aware of
the fact that by definition taxes are being
collected on behalf of the city.

9
10

So if that's the question, then
the answer is yes.

11
12

Q No, I'm asking trust fund,
you're answering a different question.

13
14

Do you understand it to be a
trust fund tax; yes or no?

15
16

A I'm not sure that I understand
the question, because I feel that I have
responded to it.

17
18
19

I am not sure that I understand
the question you are asking.

20
21

Q That's fine, we will address
this with the judge at confirmation, because
clearly you're not either willing to
acknowledge or are unaware that occupancy taxes
collected at the hotel are designated as trust
fund taxes, which is a huge problem which leads

TOBY MOSKOVITS

1
2

me into my next question.

3

A You are putting words in my -- I

4

would like to speak to my lawyer, I would like

5

a break to confer with my lawyer. You are

6

putting words in my mouth.

7

What I said is I'm not familiar

8

with that exact term, it's a legal term, and

9

that I am aware of the fact that the taxes

10

collected are on behalf of the city.

11

That's what I have said to you,

12

you keep putting word in my mouth.

13

Q Let me ask you this, would the

14

occupancy taxes collected at the hotel, were

15

they put in a segregated account?

16

A What I said is that this was

17

handled by the management company, by Michael

18

Lichtenstein, that's what I said.

19

I believe they were, but I was

20

not -- I was not doing it myself and I wasn't

21

overseeing these accounts myself; I believe

22

that they were.

23

Q What did you do to educate

24

yourself to be able to testify here today on

25

the topic of occupancy taxes collected at the

TOBY MOSKOVITS

1
2

hotel?

3

A I reviewed the tax returns that

4

were filed to ensure that we have caught up and

5

have done everything we needed to comply with

6

the fulfilling the requirements and

7

postpetition amounts confirmed that all the

8

postpetition amounts have been paid.

9

Q And I'm trying to figure out

10

what happened before that happened, before the

11

returns were just prepared and filed a couple

12

of months ago.

13

MS. PARLOVECCHIO: Objection.

14

MR. FREEDMAN: Objection to what?

15

MS. PARLOVECCHIO: Objection, I

16

don't know if there is a question.

17

MR. FREEDMAN: I'm not sure what

18

you objected to.

19

Q As the representative of the

20

Debtor, do you have any understanding of what

21

protocols were in place for making sure the

22

occupancy taxes were segregated?

23

A So, the problem with these

24

questions is you're asking me about something

25

that requires a description to explain what

TOBY MOSKOVITS

1
2

happened, but you are refusing to allow me to
respond in anything other than monosyllabic
answers.

5

So therefore, and I think that's
the meaning of my attorney's frustration, so to
get into the background you asked me in circles
and your conclusion is I'm not answering, when
that's not the case.

9
10

Q Because you keep going back to
the refrain of the fact that the tax returns
were just filed and payment were just made, and
that's not my question.

14

My question is, this is a yes or
no question, ma'am, as the Debtor's
representative here today in respect to
occupancy taxes at the hotel, do you have an
understanding of what protocol was used for
making certain that the occupancy taxes
collected were segregated?

21

A And I responded to that very
specific question, that that was handled by
Michael Lichtenstein on behalf of the
management company as part of the overseeing of
the management company.

25

Page 250

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TOBY MOSKOVITS

To my knowledge, as I said
again, is --

Q So you have no understanding?

A I didn't say that, I said that
my direct knowledge was related to what -- you
asked me, for example, what did I do to get up
to speed prior to this hearing, and I reviewed
the returns and I confirmed that the full
period has been filed and the postpetition
amount were paid.

I individually did not handle
the collection of those taxes, or overseeing
those accounts.

Q But you are here as a corporate
representative, so can you tell me anything
about the protocols that were provided to make
certain that the occupancy taxes were
segregated; anything?

A So what I said is this was
handled by the management company, okay, that's
what I said.

What I could -- I will let you
continue asking your questions, because you
don't want me to give any more background than

TOBY MOSKOVITS

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that.

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I also confirmed numerous times that I understand what tax is and that the tax is collected on behalf of the city; I did confirm that.

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Q You keep using the term tax and I keep using the term trust fund tax.

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A I clarified I'm not familiar with that legal term. You are asking me to make a statement about a legal term, and I guess you expected me to confer with my lawyer to have her explain it to me to make sure I'm agreeing to something that I actually understand.

Q Are you testifying here today under oath that you have never heard the concept of a trust fund tax?

MS. PARLOVECCHIO: Objection, that misstates the testimony.

MR. FREEDMAN: I am just asking for her to confirm one way or the other.

A That's not what I said.

Q Please tell me.

A You are asking me, I said I have

TOBY MOSKOVITS

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2 heard the term, but you are asking me -- I'm a
3 very simple person, I answer in very simple
4 words that I understand.

5 That's part of the disconnect
6 over here, you try to frame things out, you
7 force a yes or no and you refuse to allow me to
8 express myself or accept my answers.

9 Q No not at all, ma'am.

10 A I answered very clearly in words
11 that I understand, because I'm not in the
12 business of agreeing to things that I don't
13 understand, or using, accepting terms to
14 ascribe to my words that I'm not 100 percent
15 sure I know what they mean.

16 Q So what is your understanding of
17 a trust fund tax?

18 MS. PARLOVECCHIO: Objection.

19 MR. FREEDMAN: She just testified
20 she knew what it was.

21 A What I said is that you asked
22 specifically about the use, the occupancy tax,
23 that it was collected on behalf of the city,
24 that's what I said.

25 Q That's not my question, ma'am.

Page 253

TOBY MOSKOVITS

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My question now is what is your
understanding of the term trust fund tax?

3 A I don't know -- I'm not a
4 lawyer, I'm not going to respond to that and
5 tell what you it means.
6

7 Q What is your understanding of a
8 lay person of a trust fund tax?

9 A I keep repeating, I keep
10 repeating that. You asked me what was done,
11 what I did was I made sure before I came here.

12 Q Stop, stop. You're answering a
13 different question again.

14 A I'm not answering that question
15 because I'm not a lawyer and I don't feel
16 comfortable telling you what that means.

17 Q Well --

18 A I told you my understanding of
19 the actual monies collected, how it needs to be
20 treated, that's what I told you.

21 I've answered that question
22 repeatedly.

23 Q I'm entitled to know your
24 understanding of that term.

25 So, I am going to ask you one

TOBY MOSKOVITS

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last question, and then I am going to ask the
court to invoke a negative inference -- let
me --

5

A It's a legal term. What I told
you is I understand -- you asked me about the
occupancy tax, and I said I understand that
that tax is collected on behalf of the city.

9

I'm not comfortable telling you
the meaning of a legal term. And I don't know
why I'm even being asked that.

12

If you ask me about the actual
money -- sorry?

14

Q Do you understand that you and
Mr. Lichtenstein have individual liability for
the occupancy taxes collected but not remitted
to the City of New York; do you understand
that?

19

MS. PARLOVECCHIO: Objection,
calls for a legal conclusion.

21

Q Do you understand that, ma'am?

22

MS. PARLOVECCHIO: Objection.

23

A You've asked me a legal
conclusion. I have to consult with an attorney
on that.

25



1 TOBY MOSKOVITS

2 Q I'm asking if you have an
3 understanding?

4 MS. PARLOVECCHIO: Objection to
5 form.

6 A You are asking me for a legal --
7 you are asking me a question that I believe to
8 be a legal question and I'm not comfortable
9 answering that.

10 Q You have no understanding of
11 that, ma'am, is that your testimony under oath?

12 A I have --

13 MS. PARLOVECCHIO: Objection.

14 A I explained to you what my
15 understanding is of the occupancy tax, and now
16 you are asking me a bunch of legal questions
17 that I am not comfortable responding to.
18 I think I've been very clear and
19 very specific and you continue to ask questions
20 that I don't feel comfortable answering, and I
21 don't think you belong asking me to begin with,
22 and my lawyer clearly concurs.

23 Q I think you don't like the
24 questions because they make you uncomfortable.

25 I think that --

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TOBY MOSKOVITS

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A I've been very, very, blunt and
I've been very specific and I'm being very
careful with my words, because I can give you a
soliloquy, but you made it clear you don't want
to hear from me.

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7 I've been very specific, I told
8 you the taxes were not properly filed, I made
9 sure that that was done, and all the
10 postpetition monies were paid.

11 And you're putting words in my
12 mouth doesn't change the fact and you trying to
13 ask me to describe words that I'm not familiar
14 with when I'm using plain English and telling
15 you what it means and what I understand it to
16 mean is inappropriate.

17 And frankly it's bullying.

18 Q What assurance -- well, let me
19 ask you this, why wasn't the occupancy tax
20 collected at the hotel from 2017 through the
21 end of 2021 not remitted to the City of New
22 York?

23 A So, first of all, your statement
24 is not correct.

25 Because the occupancy tax for

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TOBY MOSKOVITS

1
2 the entire postpetition period has been paid.

3 Q It just was paid, it just was
4 paid.

5 It was late and it was filed --

6 MS. PARLOVECCHIO: Objection, it
7 wasn't filed late.

8 Q And it was remitted after you
9 got into a dispute with the City of New York
10 over that obligation, right?

11 A That's actually not correct,
12 because it was many returns and they were
13 prepared over time before anybody even asked
14 about it.

15 Q Okay, so put aside that.

16 A And the money was put aside --
17 you don't like my answer so you put it aside.

18 Excuse me, you don't like my
19 answer, so you put it aside.

20 You asked me a question and I
21 gave you an answer, I don't even understand put
22 it aside, so I am telling you, you asked me a
23 question and your question is factually
24 incorrect.

25 So, please --

TOBY MOSKOVITS

1
2 Q Why wasn't the occupancy tax
3 paid prepetition to the City of New York?

4 A The hotel was struggling to
5 cover its bills because the city withdrew an as
6 of right tax abatement that we were relying on
7 that would have set the property taxes at \$200
8 or \$250,000, instead of the \$1.2 million, \$1.6
9 million, \$1.8 million that the property taxes
10 were due, and it put the hotel in a very
11 difficult position in terms of being able to
12 cover its expenses.

13 Q So the Debtor used self-help in
14 deciding not to remit the occupancy tax
15 collected at the hotel as a result of the issue
16 that you just described, is that what happened?

17 MS. PARLOVECCHIO: Objection.

18 A We were trying to keep the
19 business afloat and doing our best to comply.

20 Q Did you --

21 A And frankly, frankly, I've not
22 finished my answer.

23 A Frankly there was a period of
24 time where the city said we didn't have to
25 collect it and we continued to collect it.

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TOBY MOSKOVITS

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3 So we were doing our best to
4 stay alive.

5 MS. PARLOVECCHIO: Objection.

6 Q I'll talk about the summer of
7 2021 in a moment, because that's what you're
8 referring to, right, the abatement on occupancy
9 tax in the summer of 2021, right?

10 A Yes.

11 Q Okay.

12 But my question was prepetition,
13 so that was before the summer of 2021?

14 A Well, you basically laid out
15 dates in your question starting from 2017
16 through the end of 2021, so you want to declare
17 if there is an open question I haven't
18 answered, would you like to clarify, please.

19 Q There is a lot of questions you
20 haven't answered, but I don't want to go back
21 through the past five hours.

22 But I do want to know in respect
23 to this dispute where the city of New York --
24 where you were using the occupancy taxes
25 collected at the hotel for other purposes, did
someone file, someone, did the Debtor, or the

- Moskovits, p. 517, l. 5-21 (video)

Page 517

1 TOBY MOSKOVITS VOL. II

2 this question three or four times last time.

3 MR. FREEDMAN: I disagree, but I'll

4 ask the next question.

5 Q. And you would agree with me that when

6 the hotel occupancy tax is collected, it's

7 collected on behalf of the City of New York,

8 correct?

9 A. I'm not understanding the question.

10 You want to ask me a question?

11 Q. When the hotel collects hotel

12 occupancy taxes, it's collected on behalf of the

13 City of New York, correct?

14 A. That is my understanding, correct.

15 Q. And so it's supposed to be

16 segregated, correct?

17 A. Correct.

18 Q. And so it's supposed to be held in

19 trust until it's paid over to the City of New

20 York, correct?

21 A. Correct.

22 Q. And for every guest that stayed in

23 the hotel since 2017, other than possibly the

24 abatement during the summer of 2021, the hotel

25 collected its occupancy taxes on behalf of the

- Moskovits, p. 524, l. 20 through p. 530, l. 11 (video p. 526, l. 23 through p. 528, l. 11 only)

Page 524

TOBY MOSKOVITS VOL. II

MR. FREEDMAN: [MOTION] Move to
strike, move to strike.

A. -- including beverage operations
simply shut down.

MR. FREEDMAN: [MOTION] Move to
strike as unresponsive, once again.

Q. So let me ask you this question,
ma'am.

With all of the claims that continue
to accrue and weren't paid over the past three
years, at least, before the bankruptcy including
my client, to creditors, to the New York City
Taxing Authority, what did you and Mr.
Lichtenstein do with the millions of dollars that
were taken out of the hotel?

MS. PARLOVECCHIO: Objection to form.

A. If you're referring to
Mr. Huebscher's report, it's full of lies.

Q. What did you do and Mr. Lichtenstein
do with the millions of dollars taken out of the
hotel?

MS. PARLOVECCHIO: Objection.

Q. What did you use the money for? What
did you -- who did you pay with those funds?

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TOBY MOSKOVITS VOL. II

A. There were no "millions of dollars taken out of the hotel." We took a return of a small portion of the money we lent for operations. There were no "millions of dollars taken out of the hotel." Mr. Huebscher put forth the report that we -- that Mr. Lichtenstein responded to in great detail. It's full of lies.

And for a man of that's 70 plus years old with so many acronyms after his name, he's failed at basic accounting.

MR. FREEDMAN: [MOTION] Move to strike as unresponsive.

Q. So how much money did you and Mr. Lichtenstein take out of the hotel to repay yourself?

MS. PARLOVECCHIO: Objection.

A. There was a report -- there was a report provided.

Q. I'm asking you, ma'am. I'm asking you.

A. There was a report provided with great detail --

Q. How much?

A. -- as to the debt and equity.

TOBY MOSKOVITS VOL. II

1
2 Q. How much?

3 A. There was a report provided.

4 Q. How much, ma'am?

5 A. A very detailed report provided.

6 Q. I'm not -- how much was taken? How
7 much --

8 A. There was a very detailed report
9 provided with exact transactions and exact dates
10 as to --

11 Q. And you can't tell me? You can't
12 tell me?

13 A. There was a very detail report
14 provided and I actually testified to this at
15 great length in a previous deposition.

16 Q. Okay. So the --

17 A. There was very detailed report
18 provided that Mr. Huebscher refused to review as
19 to transactions.

20 Q. So --

21 MR. FREEDMAN: Alright. [MOTION]
22 Move to strike as unresponsive.

23 Q. So rather than playing my client,
24 rather than turning over hotel occupancy taxes to
25 the City of New York, rather than paying other

1 TOBY MOSKOVITS VOL. II

2 tax obligations, including real estate taxes, you
3 and Mr. Lichtenstein decided to pay yourselves
4 back millions of dollars? Do I have that
5 correct?

6 MS. PARLOVECCHIO: Objection.

7 Q. Do I have that correct?

8 A. Michael and I invested close to \$30
9 millions into a hotel and found ourselves
10 victimized less than 90 days after the closing by
11 a predatory lender, who has testified I
12 understand from my attorneys --

13 MR. FREEDMAN: [MOTION] Move to
14 strike. Move to strike.

15 A. -- that his own advisors told him he
16 would never be able to make debt service.

17 MR. FREEDMAN: [MOTION] Move to
18 strike.

19 A. And went ahead with an intention to
20 undermine our business.

21 Q. Are you refusing to answer my
22 question, ma'am?

23 A. I answered your question.

24 Q. No, you didn't.

25 A. We invested -- we invested and lent

Page 528

TOBY MOSKOVITS VOL. II

close to \$30 million into this property.

Q. And you paid yourselves back --

A. (INAUDIBLE DUE TO CROSS-TALK.)

Q. You paid yourself back millions of dollars when you weren't paying back other creditors, right?

A. We paid ourselves back years before the bankruptcy, a very modest amount of the money that was invested, a modest amount of the \$30 million.

Q. And would it be also accurate to say that you and Mr. Lichtenstein misappropriated funds that were held in trust for the City of New York that were supposed to be paid over to them?

MS. PARLOVECCHIO: Objection.

A. We paid over 5 --

THE WITNESS: I'm sorry, Gina. What did you say?

MS. PARLOVECCHIO: I objected.

THE WITNESS: Okay.

A. We paid over \$5 million in excess tax to the City of New York that put the hotel in a very perilous state and that is all being disputed and is going to be resolved with the

TOBY MOSKOVITS VOL. II

1
2 City.

3 Q. How about the trust fund taxes, the
4 City -- hotel occupancy taxes?

5 A. We overpaid -- we overpaid
6 \$5 million --

7 MS. PARLOVECCHIO: Objection.
8 Objection.

9 A. -- in tax to the City.

10 THE WITNESS: I'm sorry.

11 MS. PARLOVECCHIO: Objection.

12 Again, Gary, this topic has been
13 revisited now five times, six times.

14 MR. FREEDMAN: I'm almost done, Gina,
15 so -- almost done. I'm just trying to get an --

16 A. The matter is being all -- all --

17 Q. I'm just trying to get an answer to
18 any question I've asked today.

19 A. I've answered. I've always answered.
20 I'll graciously do it a sixth time.

21 All post-petition occupancy tax has
22 been paid. All tax returns have been filed. And
23 we are in negotiating a settlement with the City.
24 And, frankly, we overpaid by \$5 million in taxes
25 to the Department of Finance.

Page 530

TOBY MOSKOVITS VOL. II

1
2 Q. What gave you the right to take trust
3 fund taxes to use for your own purpose?

4 MS. PARLOVECCHIO: Objection.

5 Q. What agreement -- what agreement did
6 you have with the City to take their money,
7 ma'am?

8 MS. PARLOVECCHIO: Objection.

9 A. This matter is going to be addressed
10 in papers that we're filing shortly. And my
11 lawyer --

12 MR. FREEDMAN: Let's -- let's take a
13 minute break.

14 THE WITNESS: How much time is left
15 in the deposition?

16 THE VIDEOGRAPHER: Just a moment.
17 I'll take us off the record and then I'll give
18 you a number.

19 The time 12:05 --

20 MS. PARLOVECCHIO: I'm sorry. I'm
21 sorry. Before we go off the record -- I'm sorry.

22 THE VIDEOGRAPHER: Oh.

23 MS. PARLOVECCHIO: Before we go off
24 the record, I just want to note for the record
25 that we have in addition to Mr. Freedman,

2. Lichtenstein MC

- Lichtenstein MC, p. 95, l. 2 through p. 98, l. 22 (no video)

Page 95

1 MICHAEL LICHTENSTEIN
2 question? I didn't hear the question.
3 Q Yes, the outstanding hotel
4 occupancy taxes, what's the status of the
5 negotiations in respect to the payment of
6 those?
7 A Well, I am not going to disclose
8 to you where we are in negotiations, since I
9 would not say that you are on our side, so I
10 will let Mayer Brown provide you with that
11 information.
12 Q You understand that you have
13 personal liability for those hotel occupancy
14 taxes, sir?
15 A I understand that I have
16 personal liability.
17 MR. GLUCKSMAN: Objection,
18 irrelevant.
19 He's being deposed as a 30(b)(6)
20 for the corporation, not as a person.
21 MR. FREEDMAN: No, that's where
22 you're wrong, Mr. Glucksman. He's also
23 noticed individually.
24 MR. GLUCKSMAN: You and I can
25 agree to disagree.

1 MICHAEL LICHTENSTEIN

2 MR. FREEDMAN: Okay.

3 If you just take a look at the
4 notice, though, maybe you will get it
5 right.

6 I'm going to move on.

7 Q What's the status of discussions
8 in respect to the resolution of the real estate
9 taxes?

10 A Let Mayer respond to your
11 questions on these matters.

12 Q So, sir, with respect to the
13 hotel occupancy taxes, is the management
14 company going to be the entity that is a party
15 to whatever agreement comes out of those
16 negotiations?

17 A I will let Mayer Brown respond
18 to these questions.

19 Q And what is the source of funds
20 that the management company is going to use to
21 repay the outstanding hotel occupancy taxes?

22 A I will let Mayer Brown respond
23 to these questions.

24 Q And, in fact, talking about
25 source of funds, what's going to be the source

MICHAEL LICHTENSTEIN

1 of funds for the management company to pay back
2 the \$824,000 under the settlement on the PPP
3 loan if the Debtor's plan is not confirmed?
4

5 MR. GLUCKSMAN: Objection.

6 THE WITNESS: Go ahead, James.

7 MR. GLUCKSMAN: I object on the
8 ground it's a hypothetical question.

9 MR. FREEDMAN: No, it not
10 hypothetical. It's in the plan, sir.

11 Q Please answer the question,
12 Mr. Lichtenstein.

13 A I already responded to that
14 question. We had that conversation already in
15 the previous deposition.

16 Q Are you refusing to answer it
17 now?

18 A I said I already responded at
19 length about this matter, and in summary --

20 Q If you can just respond to it
21 now so I can move on?

22 A Yes, if you would stop
23 interrupting my answer I would be able to
24 answer it.

25 Q Please stop yelling at me, sir.

1
2

MICHAEL LICHTENSTEIN

3

A And I did not yell at you, for
the record.

4

Q Yes, you did. You're raising
our voice.

5

A If you stop interrupting my
answers I can finish my answers without
interrupting.

6

Q Sir, what's the source of funds,
sir?

7

A And I responded already that
it's an irrelevant question because our plan is
going to be confirmed.

8

Q If it's not confirmed what's the
source of funds?

9

A We already dealt with that
question at length in the last deposition.

10

Q You are refusing to answer the
question, then?

11

A No, I am not refusing to answer
the question. I already answered that question
at length in the previous deposition.

12

Q How long have you been a
developer?

13

A I don't know, about 20 years.

VII. **Fabricated November 2017 Management Agreement**

a. **Exhibits**

- JOINT EXHIBIT 11 - Assignment of Hotel Management Agreement and Subordination of Hotel Management Fees w/ Hotel Management Agreement
- BSP EXHIBIT 64 - Motion to Authorize Intercompany Transfers [ECF No. 83]
- BSP EXHIBIT 22 - Fourth Amendment to Operating Agreement of 96 Wythe Acquisition LLC
- JOINT EXHIBIT 8 - Loan Agreement between 96 Wythe Acquisition and Benefit Street Partners Realty Operating Partnership, L.P.
- BSP EXHIBIT 24 – Loan Closing Binder with FedEx delivery confirmation
- BSP EXHIBIT 7 – Email chain from M. Wainger to T. Moskovits re: BSP/ Williamsburg Hotel - Management Agreement dated 10/30/2017 (Moskovits deposition exhibit TM-0010)
- BSP EXHIBIT 8 - Email chain from M. Wainger to N. Kaiser and E. Balshem re: BSP doc comments - Management Agreement dated 11/2/2017 (Moskovits deposition exhibit TM-0011)
- BSP EXHIBIT 12 - Email from M. Wainger to N. Kaiser re: BSP/Williamsburg - Assignment of Management Agreement with attached draft Agreement dated 12/5/2017 (Moskovits deposition exhibit TM-0012)
- BSP EXHIBIT 13 - Email chain from N. Kaiser to M. Wainger re: BSP/Williamsburg - Assignment of Management Agreement dated 12/5/2017 (Moskovits deposition exhibit TM-0013)
- BSP EXHIBIT 14 - Email chain from M. Wainger to N. Kaiser, M. Lichtenstein, and T. Bolles re BSP/Williamsburg – Mortgage Loan Documents with attached executed copies of mortgage loan documents dated 12/12/2017
- BSP EXHIBIT 9 - BSP Drop Box screenshot reflecting last date documents provided
- BSP EXHIBIT 56 - Schedules of Assets and Liabilities and Statement of Financial Affairs - Reporting Period 04/01/2021 - 04/30/2021 [ECF No. 31]

- JOINT EXHIBIT 30 - Amended Schedule E/F: Creditors Who Have Unsecured Claims [ECF No. 205]
- BSP EXHIBIT 117 - Amended Schedule D: Creditors Who Have Claims Secured by Property [ECF No. 411]
- BSP EXHIBIT 51 – Transcript of 341 Meeting of Creditors
- BSP EXHIBIT 129 – Transcript and Video of Videotaped Virtual Deposition of David Goldwasser taken on 3/15/2022
- BSP EXHIBIT 123 – Transcript and Video of Videotaped Deposition of Toby Moskovits Volume I taken on 3/4/2022
- BSP EXHIBIT 137 – Transcript and Video of Videotaped Deposition of Toby Moskovits Volume II taken on 4/1/2022

b. **Testimony**

1. **Lichtenstein**

- Lichtenstein p. 162, l. 17 through p. 168, l. 5 (video p. 162, l. 17; p. 162, l. 24 through p. 164, l. 14; p. 164, ll. 22-25; p. 165, l. 19 through p. 166, l. 25 and p. 167, ll. 21-24 only)

Page 162

1 M. LICHTENSTEIN

2 we have provided these documents. We have provided

3 the books and records. We have provided the bank

4 statements. This is a fact that these \$10 million

5 were provided to the debtor. And Benefit Street and

6 you, Mr. Freedman, are simply trying to deny facts.

7 MR. KELLEY: Let's not characterize --

8 A. I can't help you with that.

9 MR. KELLEY: Let's just stop at the

10 response. Let's not characterize what

11 they're trying to do. We will deal with

12 that. Let the lawyers deal with that.

13 Please just respond to his question.

14 (Whereupon, a motion was marked as

15 Lichtenstein Exhibit 6 for identification, as

16 of this date.)

17 Q. You should have up Exhibit Number 6, sir.

18 Let me know when you have it, please.

19 Do you have it, sir?

20 A. I'm reading it, looking at it.

21 Q. Let me know when I may proceed, sir.

22 A. Okay.

23 Q. Okay.

24 So you have in front of you docket

25 entry 83, which is Motion to Authorize

M. LICHTENSTEIN

1
2 Intercompany Transfers, and attached as Exhibit A
3 is a document entitled Hotel Management and
4 Services Agreement, dated November 21, 2017.

5 Do you recognize the document, sir?

6 MR. KELLEY: The exhibit or the motion?

7 MR. FREEDMAN: Both.

8 A. My computer actually froze. I'm trying
9 to look. Okay. It's moving now.

10 Okay.

11 Q. Do you recognize that?

12 A. Yes.

13 Q. Okay.

14 Did you provide Mr. Goldwasser a copy
15 of the management agreement when he was compiling
16 the information for preparation of the debtor's
17 bankruptcy schedules?

18 A. I would think so. I don't know -- why
19 would the management be relevant to the schedule of
20 debts?

21 MR. KELLEY: Sorry. Mr. Lichtenstein,
22 forgive me. We want to move through this.
23 He's asking if you provided it. We'll worry
24 about the relevance.

25 Did you provide it?

M. LICHTENSTEIN

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2 A. The answer is I don't remember.

3 Q. Okay.

4 Was the management agreement in effect
5 at the time that the debtor filed for bankruptcy?

6 A. Yes. It's been in effect since it was
7 signed.

8 Q. Can you tell me why it's not listed on
9 Exhibit G to the debtor's bankruptcy schedules
10 that's the schedule of executory contract and
11 leases?

12 A. I'm not claiming to be a bankruptcy
13 process expert, and I have no clue why it's not
14 there or if it should be there. I don't know.

15 Q. Can you tell me why when the debtor filed
16 for bankruptcy on February 23, 2021, that the first
17 notice of the existence of the management agreement
18 attached to docket entry 83 was the filing of this
19 exact paper, document entry 83, on August 11, 2021?

20 MR. KELLEY: Objection. Form.

21 A. I have no clue.

22 Q. And is money owed to the management
23 company by the debtor under this management
24 agreement?

25 A. Yes.

M. LICHTENSTEIN

1
2 Q. Can you tell me why the management
3 company did not file a proof of claim in this
4 bankruptcy case?

5 MR. KELLEY: I think this is the third
6 time you've asked that question, isn't it?

7 MR. FREEDMAN: Not even close. The
8 prior question, Mr. Kelley, was in respect to
9 the debtor's principal's purported loans.

10 MR. KELLEY: Okay. Fair enough.

11 You can answer the question.

12 A. Well, I cannot answer the question,
13 because I don't claim to be an expert --

14 (Technical interruption.)

15 A. I do not claim to be an expert on how
16 stuff should be filed in bankruptcy. Perhaps I was
17 given bad advice, but I don't know what to tell you.
18 Maybe we need to -- maybe it needs to be amended.

19 Q. And the amount owed by the debtor to the
20 management company would be an unsecured debt; is
21 that correct?

22 A. Well, I will not answer legalistic
23 bankruptcy questions.

24 Q. Okay. It would be a debt, though?

25 A. But the amount owed is about \$2 million.

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M. LICHTENSTEIN

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2

It's a very significant amount of money. It's about
\$2 million.

3

4

Q. Okay.

5

6

And it would be a debt that is owed by
the debtor to the management company; is that
correct?

7

8

A. It would be a debt that is owed to the
management company, yes, indeed.

9

10

11

Q. Can you tell me why that's not reflected
on the bankruptcy schedules filed by the debtors in
this case or any of the subsequent amendments to
schedules filed in this case?

12

13

14

A. I don't know why it wasn't there.

15

Perhaps we were given bad advice. Okay.

16

17

Is that what you're saying? We were
given bad advice? Could be.

18

19

20

21

MR. KELLEY: Mr. Lichtenstein, I think
he's just asking if you know why it wasn't
there. If your answer is "I don't know,"
let's stop there. I don't think you have to
go beyond that.

22

23

24

A. He was -- oh, okay. I will take that
back. I was being sarcastic. The answer is I don't
know.

25

M. LICHTENSTEIN

Q. And I would appreciate it if you limited the sarcasm, sir.

MR. KELLEY: That's all reserved entirely for me. I'm the only one on this whole transcript that's allowed to be sarcastic, not you.

THE WITNESS: Okay.

Q. Did you ever provide a copy of this management agreement to Mr. Rauch?

A. I assume he's seen it.

Q. My question is: Do you recall providing a copy of the management agreement to Mr. Rauch?

A. I don't recall now a specific time or date that it was provided. I mean, everyone knows about the management agreement. Benefit Street also knows about the management agreement, and this is the management agreement.

MR. FREEDMAN: Move to strike.

I will ask my question again.

Q. Do you recall providing a copy of this management agreement to Mr. Rauch?

A. I do not recall a time or date at which I provided the management agreement to Mr. Rauch.

Q. Do you recall providing a copy of this



1

M. LICHTENSTEIN

2

management agreement to Mr. Kirschner?

3

A. I do not recall on what date and what

4

time and where I provided this management agreement

5

to anyone.

6

Q. And when was the management agreement

7

attached to Exhibit --

8

MR. FREEDMAN: Strike that.

9

Q. -- Number 6? When was it prepared, sir?

10

MR. KELLEY: That came out a little

11

garbled. Are you referring to when --

12

MR. FREEDMAN: I will do it again.

13

It's easier for me just to do it again.

14

MR. KELLEY: That's fine.

15

Q. The management agreement that we're

16

talking about, sir, when was it prepared?

17

A. Obviously it was prepared around the date

18

it was signed.

19

Q. Are you testifying that this document was

20

prepared or about November 21, 2017?

21

A. I am testifying that it was prepared on

22

or about the time that it was signed.

23

Q. Tell me when was it signed, sir. I don't

24

want to joust with you on this.

25

A. Well, I have to look for the date.

- Lichtenstein p. 168, l. 15 through p. 172, l. 19 (video p. 168, ll. 15-18; p. 169, l. 13 through p. 170, l. 14 and p. 172, ll. 13-19 only)

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1 M. LICHTENSTEIN

2 management agreement to Mr. Kirschner?

3 A. I do not recall on what date and what

4 time and where I provided this management agreement

5 to anyone.

6 Q. And when was the management agreement

7 attached to Exhibit --

8 MR. FREEDMAN: Strike that.

9 Q. -- Number 6? When was it prepared, sir?

10 MR. KELLEY: That came out a little

11 garbled. Are you referring to when --

12 MR. FREEDMAN: I will do it again.

13 It's easier for me just to do it again.

14 MR. KELLEY: That's fine.

15 Q. The management agreement that we're

16 talking about, sir, when was it prepared?

17 A. Obviously it was prepared around the date

18 it was signed.

19 Q. Are you testifying that this document was

20 prepared or about November 21, 2017?

21 A. I am testifying that it was prepared on

22 or about the time that it was signed.

23 Q. Tell me when was it signed, sir. I don't

24 want to joust with you on this.

25 A. Well, I have to look for the date.

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M. LICHTENSTEIN

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2

Q. Can you answer the question?

3

4

5

6

A. I'm looking at the exhibit, and I'm looking for the date of the document. I guess it's in the beginning, so I'm going back to the beginning.

7

8

9

MR. KELLEY: He's not asking you to guess. Do you know when it was signed or not, sir?

10

11

A. I'm looking at the document. It keeps freezing.

12

Well, November 21, 2017.

13

Q. And who prepared this document?

14

15

16

A. I don't remember now who prepared it exactly. I mean, I was involved in some of it. I don't remember who prepared it.

17

18

Q. Do you recall who was involved in the preparation of the document?

19

20

21

A. I don't remember now. I mean, I definitely was involved. I don't remember if there was anyone else and who.

22

23

Q. Are there any drafts of this management agreement?

24

A. I'm sure there were drafts at the time.

25

Q. Where would those drafts be now?

M. LICHTENSTEIN

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A. I have no clue.

3

Q. On whose computer system was this

4

document prepared?

5

A. You're asking me now to remember on whose

6

computer system was a document prepared on November

7

21 of 2017 or at any time in 2017, I wouldn't know

8

that.

9

Q. Are there any emails or correspondence or

10

communication that relate to the drafting,

11

negotiation, or preparation of this management

12

agreement?

13

A. I don't know, and I'm assuming that it

14

would have been provided already if there are.

15

Q. Do you recall having seen any such

16

documents?

17

A. I don't remember now, but it's a pretty

18

straightforward, simple agreement, so I'm not sure

19

why you think it would be lots of communication

20

about this. It's a pretty standard hotel management

21

agreement.

22

Q. How do you know, sir, what a standard

23

hotel management agreement looks like?

24

A. Because I've reviewed hotel management

25

agreements in this context of this hotel and in the

M. LICHTENSTEIN

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context of other hotels.

3

Q. What hotel management agreements did you review prior to the preparation and execution of this management agreement?

6

A. I didn't say the timing of when I reviewed it. I said over the past few years I reviewed hotel management agreements, and this is a pretty standard, straightforward management agreement.

10

11

Q. What hotel management agreements did you review prior to the preparation and execution of this management agreement?

13

14

A. I don't remember now exactly, but I have reviewed hotel management agreements as it pertains to other hotels. I reviewed management agreements as it pertains to hotels that we were going to manage in New York or Miami. I've reviewed hotel management agreements of other chains. I'm not sure how else better to answer your question.

16

17

18

19

20

21

Q. Prior to the preparation and execution of this management agreement, can you identify a single hotel management agreement that you reviewed?

22

23

24

MR. KELLEY: Do you mean by name? I'm sorry. I just want to understand what he

25

M. LICHTENSTEIN

means.

MR. FREEDMAN: I don't care. Any way
he can describe it for me.

A. I don't remember now what I reviewed in
2016.

Q. You mean 2017?

A. 2016 or 2017. I'm not sure what your
question is. You're asking me an overly broad
question which doesn't have an answer.

Q. I'm assuming --

MR. FREEDMAN: Well, strike that.

Q. The debtor was represented by Nicholas
Kaiser in respect to the loan closing with Benefit
Street Partners, correct?

A. Yes.

Q. I assume that you provided a copy of this
management agreement to Mr. Kaiser in that regard?

A. I don't remember.

Q. But you recall the management agreement
being an issue in respect to the documentation and
closing of the Benefit Street loan, though, correct?

MR. KELLEY: Objection. Vague.

A. No, I don't recall it being an issue.
They wanted a management agreement. There was no

- Lichtenstein p. 173, l. 3 through p. 178, l. 9 (video p. 173, l. 19 through p. 174, l. 10; p. 175, ll. 7-12; p. 177, ll. 6-25 only)

Page 173

1 M. LICHTENSTEIN

2 issue. What was the issue?

3 Q. So it's your testimony, sir, that you

4 have no recollection of providing this November 21,

5 2017, management agreement to Mr. Kaiser? Do I have

6 that correct?

7 A. You have that wrong. You have put words

8 in my mouth once again. I said I don't remember

9 when and if I provided it to Mr. Kaiser six years

10 ago.

11 Q. So it's possible that you never provided

12 this management agreement to Mr. Kaiser, correct?

13 A. It's probable that I provided it to him.

14 It's possible that I didn't. I would not remember

15 now what I provided to my lawyer amongst a multitude

16 of probably hundreds of loan documents in relation

17 to this closing, what exactly I provided to him six

18 years ago.

19 Q. Well, in that regard, do you recall

20 providing a copy of this November 21, 2017,

21 management agreement to Benefit Street?

22 A. I'm positive that we provided it, yes.

23 Q. So you have no recollection of whether or

24 not you provided it to your own attorney, but you

25 have a specific recollection that you provided it to

M. LICHTENSTEIN

Benefit Street? Do I have that correct?

A. You have it incorrect. You're asking me to remember exactly what and when I provided what to my lawyer. My response was I don't remember exactly when I provided what to my attorney.

I am positive that we provided this to Benefit Street, because it was required as part of the closing. They wanted to see a management agreement in place.

Q. Okay. And --

A. I don't remember how, when, and where we provided, but I'm positive that it was provided.

Q. I want to go back to Mr. Kaiser for a second, because you seemed to rephrase my question as to whether and when, and I only asked you whether you have a recollection of providing the management agreement to your attorney, Mr. Kaiser. I have not asked you yet when you provided it to Mr. Kaiser.

So I just want to make certain that we're clear on the record on that question of whether you have a recollection of the debtor providing a copy of the November 21, 2017, management agreement to your attorney, Mr. Kaiser?

MR. KELLEY: Objection. Form.

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1 M. LICHTENSTEIN

2 Go ahead.

3 A. If you're asking as a general question,
4 then I recollect providing it for the closing, which
5 was to the lender and to Kaiser. I do not remember
6 details or dates or when it was provided.

7 Q. Do you have any documentary proof that
8 the November 21, 2017, management agreement was
9 provided to my client?

10 A. Yes. We closed the loan, and I doubt
11 Benefit Street would close the loan without a
12 management agreement in place.

13 Q. Okay. Not my question.
14 My question is: Do you have any
15 documentary proof that the November 21, 2017,
16 management agreement was provided to my client?

17 MR. KELLEY: Objection. Form.

18 You may answer.

19 A. My answer is that the fact that there was
20 a closing statement that was signed is documentary
21 proof that a management agreement was provided.
22 They wouldn't close without it.

23 Q. So I would have to go look at the closing
24 statement and the related closing documents to
25 determine if what you said was accurate, right?

M. LICHTENSTEIN

1
2 A. No, because it seems like you guys have
3 simply replaced the management agreement with a
4 shortened version of the management agreement, which
5 you're claiming now is the real management agreement
6 which, by the way, has similar terms to this
7 management agreement. So I don't know what the
8 point of this whole discussion is. It has the
9 closing management fee and similar terms.

10 Q. Not even close. I'm not going to debate
11 that with you, sir. Let's go back to my original
12 question.

13 Other than the closing documents or the
14 closing statements, do you have a single document
15 that would verify that debtor provided a copy of
16 the November 21, 2017, management agreement to my
17 client?

18 MR. KELLEY: Objection. Form.

19 You can answer.

20 A. As I said, we closed the loan, and
21 Benefit Street required a management agreement in
22 place to close the loan.

23 Q. I'm going to assume the answer to that
24 question is no, you don't have any, because I would
25 expect that you would tell me otherwise, sir. But I

1
2

M. LICHTENSTEIN

will give you one last chance.

3

A. I repeatedly have said that this was
provided for the closing. There was a closing.
This is the management agreement.

6

Q. Do you have proof that it was provided
for the closing?

8

A. I don't know what you mean by proof. You
have proof that I ate breakfast today? What does
that even mean? There was a closing and a
management agreement was provided.

12

Q. Do you have an email? A letter? Some --

13

A. I --

14

Q. Let me finish.

15

MR. KELLEY: Let him finish his

16

question.

17

Q. -- proof that that management agreement
was transmitted to my client prior to closing? It's
a very simple question, sir. It's like the fourth
time I've had to reask it.

21

MR. KELLEY: Objection. Form.

22

You can answer.

23

Please proceed.

24

A. I assume that whatever was -- proof we
had was provided already.

25

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M. LICHTENSTEIN

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Q. It wasn't, and that's why I'm asking.

3

You are here as the debtor's representative to
4 answer those questions, so if you know something,
5 tell me. If you don't, then tell me you're not
6 aware of anything.

7

A. I assume that whatever we had was
8 provided, and I don't have anything more to answer
9 on the subject.

10

Q. How about the transmittal to Mr. Kaiser
11 of the November 17, 2021, agreement? Have you seen
12 anything in that regard?

13

MR. FREEDMAN: I said it wrong. Let me
14 try it again.

15

Q. How about in respect to Nicholas Kaiser,
16 your attorney? Have you seen any transmittal or
17 proof that the November 21, 2017, management
18 agreement was transmitted to him?

19

MR. KELLEY: And I'm just going to
20 caution the witness. He's just simply asking
21 if you if you recall that a transmittal
22 exists. He's not asking for the content of
23 it, which would reveal privileged
24 information.

25

So do not reveal the content. But if

- Lichtenstein p. 178, l. 15 through p. 179, l. 17 (no video)

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M. LICHTENSTEIN

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Q. It wasn't, and that's why I'm asking. You are here as the debtor's representative to answer those questions, so if you know something, tell me. If you don't, then tell me you're not aware of anything.

A. I assume that whatever we had was provided, and I don't have anything more to answer on the subject.

Q. How about the transmittal to Mr. Kaiser of the November 17, 2021, agreement? Have you seen anything in that regard?

MR. FREEDMAN: I said it wrong. Let me try it again.

Q. How about in respect to Nicholas Kaiser, your attorney? Have you seen any transmittal or proof that the November 21, 2017, management agreement was transmitted to him?

MR. KELLEY: And I'm just going to caution the witness. He's just simply asking if you if you recall that a transmittal exists. He's not asking for the content of it, which would reveal privileged information.

So do not reveal the content. But if

1 M. LICHTENSTEIN

2 you recall if a document or a transmittal
3 exists is what I will allow you to answer.

4 A. I already answered that question earlier.
5 I don't remember any communications with Mr. Kaiser
6 from six years ago when we were talking about
7 hundreds or probably over a thousand pages of loan
8 documents about this closing.

9 Q. And my question was a little different,
10 sir.

11 Have you seen anything that reflected
12 the transmittal of this management agreement to
13 Mr. Kaiser?

14 A. All documents were provided by a Dropbox,
15 so I'm not sure there would even be any transmittal,
16 per se. It was a Dropbox, and anything was put in
17 the Dropbox.

18 So I'm not sure what you mean by
19 transmittal. But as I said, I don't remember now
20 how the stuff was sent six years ago, so --

21 Q. At the time that you were involved with
22 the preparation and then the execution of this
23 management agreement, that was at the time during
24 which the debtor and Benefit Street were advancing
25 the loan transaction, correct?

- Lichtenstein p. 180, l. 24 through p. 183, l. 9 (no video)

Page 180

1 M. LICHTENSTEIN

2 MR. KELLEY: Objection. Form.

3 A. Can you repeat the question. I didn't

4 follow.

5 Q. Yes.

6 At the time that you prepared this

7 November 21, 2017, management agreement was right

8 in the middle of the time where the debtor and

9 Benefit Street were moving forward with the

10 closing of the loan transaction, correct?

11 A. Well, I don't remember the exact dates of

12 when we started --

13 (Technical interruption.)

14 A. Someone has a computer that's constantly

15 beeping. Someone has to shut off their sound.

16 THE COURT REPORTER: I hear it, too.

17 MR. KELLEY: I hear it as well.

18 Someone's computer is chiming.

19 A. Yes, someone has to shut off their chime.

20 However, I was in the middle of saying

21 before we were interrupted that -- what was the

22 question again? Repeat it again. I lost my train

23 of thought.

24 Q. At the time that you prepared and

25 executed this November 21, 2017, management

M. LICHTENSTEIN

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2

agreement, it was right in the middle of the time
where the debtor and Benefit Street were moving
forward with the closing of the loan transaction,
correct?

6

A. Well, I don't remember when we started
moving towards the closing, but it was around that
time. I mean, I'm not going to answer as to dates
and et cetera.

10

Q. Would it be your belief that -- well, let
me represent to you that I have correspondence --
and I can show it to you in a moment -- that -- let
me make sure I get this right.

14

So I have email communication as of
October 30th between counsel including you and Ms.
Moskovits with respect to due diligence and
related issues with respect to the loan.

18

So this November management agreement
was prepared right in the middle of the
underwriting and the closing of the loan; is that
fair?

22

A. I said that I don't remember the exact
dates of when we started moving towards the closing.
That's all I said. I don't want to testify as to
dates.

25

M. LICHTENSTEIN

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2

But it was, you know -- part of the discussion of the closing was the management agreement, and yes, we provided --

3
4
5

Q. So the management agreement was prepared in part for purposes of closing on the loan transaction, correct?

6
7
8

A. Well, we were going to do it anyway. But I guess in part, you can say it was from that, yes.

9
10
11

Q. And you would think that upon preparation and execution of the management agreement that you would provide a copy to your attorney, Mr. Kaiser, so he could advance that closing, right?

12
13
14

A. I think I said I definitely -- I actually used the words before "I'm positive that it was provided" to the attorney and to Benefit Street.

15
16
17

Q. And that would have --

18
19
20

A. You're asking me -- you're asking me when, how, what date, what time. I'm telling you I don't remember what happened six years ago, but it was absolutely provided for the closing purposes --

21
22
23

Q. But that's --

(Simultaneous crosstalk.)

24
25

A. It was absolutely provided as part of the closing to the lender and to the attorneys. I just

Page 183

1 M. LICHTENSTEIN

2 don't remember dates or times.

3 Q. It would be fair to assume you would have
4 provided it to your attorneys shortly after it was
5 prepared, correct?

6 A. I just said that I will not respond on
7 dates and times and when exactly stuff was sent,
8 because I don't remember what happened six years
9 ago.

10 Q. Okay.

11 MR. FREEDMAN: Let's go off the record
12 so our court reporter can wave to the bus.

13 THE COURT REPORTER: I'm sorry. It
14 will just take a minute.

15 MR. KELLEY: No, no, no. No need to
16 apologize. That's important. Go ahead,
17 Missy. We're going off the record.

18 THE VIDEOGRAPHER: The time is 3
19 o'clock. We're off record.

20 (Whereupon, there was a lunch break
21 taken in the proceeding.)

22 THE VIDEOGRAPHER: The time is 3:23.
23 We're back on the record.

24 (Whereupon, a Document was marked as
25 Lichtenstein Exhibit 7 for identification, as

- Lichtenstein p. 184, l. 3 through p. 188, l. 16 (no video)

Page 184

1 M. LICHTENSTEIN

2 of this date.)

3 Q. Mr. Lichtenstein, you should have Exhibit

4 7 up on your screen. Confirm when you do, please.

5 A. Exhibit 7?

6 Q. Yes, sir.

7 A. Yes.

8 Q. If you go back to page 4, you'll see an

9 email from Margot Wainger dated October 27, 2017.

10 Let me know when you're there.

11 A. October 30th?

12 Q. 27th, sir.

13 A. Yes.

14 Q. Okay. So you see the email from Ms.

15 Wainger to a host of people, including your partner,

16 Toby Moskovits?

17 Do you see her name there?

18 A. Okay.

19 Q. And you are on this as well at

20 nycdevmanager@gmail.com.

21 That's your email address, sir?

22 A. Yes.

23 Q. And Nicholas Kaiser, your attorney, next

24 to you?

25 A. Uh-huh.

Page 185

M. LICHTENSTEIN

1
2

Q. Yes, sir?

3

A. Yes.

4

Q. Thank you.

5

It starts off: Nicholas, SSL -- which

6

I will tell you refers to Strook and Strook &

7

Lavan -- will be serving as outside counsel to

8

Benefit Street Partners in connection with the

9

above-referenced transaction and will be working

10

with BSP's internal personnel as they finalize the

11

underwriting, due diligence, and credit approval

12

process on the proposed loan.

13

Have I read that correctly, sir?

14

A. Yes.

15

Q. And then it goes on: Also, for our

16

mutual convenience and in anticipation of our

17

kickoff call today, I've drafted a list of items

18

that, together with anything required by our client,

19

will be necessary to close this transaction.

20

Did I read that correctly?

21

A. Yes.

22

Q. And then on page 5, there's a list of

23

items going on to page 6, 20 items.

24

Do you see that?

25

A. Uh-huh. Yeah.

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M. LICHTENSTEIN

1
2 Q. On page 6, item 14 is identified,
3 Property Management Agreement.

4 Do you see that?

5 A. Okay. I don't see it, but okay. Which
6 number?

7 MR. KELLEY: 14.

8 Q. 14 on page 6.

9 Do you have it?

10 A. Okay.

11 Q. Okay. So then if you would move back to
12 page 2 --

13 A. Yes.

14 Q. -- you'll see an email dated October 30,
15 2017, between Margot Wainger and Miriam Gross at 11
16 a.m.

17 Do you see that?

18 A. Okay.

19 Q. It says: Thanks, Miriam. I believe on
20 our call you mentioned that the management agreement
21 was uploaded to the Dropbox site. I can't seem to
22 locate it. Could you please circulate a copy by
23 email.

24 So the reference to the Dropbox, is
25 that what you were referring to earlier?

M. LICHTENSTEIN

1
2

Documents loaded into a Dropbox?

3

A. Well, every closing was like that, so
4 yes. I wasn't referring specifically to this email.
5 I was just generally speaking.

6

Q. But that comports with your prior
7 testimony about documents being uploaded into a
8 Dropbox?

9

A. I guess, yes.

10

Q. Okay.

11

A. It's a pretty standard procedure for
12 closings, but yes.

13

Q. And then your partner, Ms. Moskovits, at
14 11:02 the same day, October 30, writes: We do not
15 have a management agreement in place.

16

Do you see that?

17

A. Uh-huh.

18

Q. Yes, sir? You need to respond verbally,
19 please.

20

A. Yes.

21

Q. And you're copied on all of these emails,
22 right? You see your email on Toby Moskovits's email
23 nycdevmanager@gmail.com?

24

A. Yes.

25

Q. Then if you flip to the first page,

1
2

M. LICHTENSTEIN

you'll see an email from Margot Wainger, October 30,
2017, at 11:54. You're copied on here as well.

It says: My apologies. I now recall
that Nicholas mentioned he put one together
memorializing the terms. Nicholas, please send
over a draft once prepared. Thanks.

8

Did I read that correctly?

9

A. Yes.

10

Q. So this is an email chain that you and

11

Ms. Moskovits were a part of, right?

12

A. Seems like it, yes. I mean, I'm reading

13

it. The documents speak for themselves.

14

Q. Documents don't really speak for

15

themselves.

16

A. The emails speak for themselves, but yes.

17

MR. FREEDMAN: The next one, please.

18

(Whereupon, an email was marked as

19

Lichtenstein Exhibit 8 for identification, as

20

of this date.)

21

Q. And please let me know when you have

22

Exhibit 8 showing.

23

A. Exhibit 8?

24

Q. Yes, sir. Do you have it, sir?

25

A. Yes.

- Lichtenstein p. 188, l. 21 through p. 194, l. 15 (no video)

Page 188

1 M. LICHTENSTEIN

2 you'll see an email from Margot Wainger, October 30,

3 2017, at 11:54. You're copied on here as well.

4 It says: My apologies. I now recall

5 that Nicholas mentioned he put one together

6 memorializing the terms. Nicholas, please send

7 over a draft once prepared. Thanks.

8 Did I read that correctly?

9 A. Yes.

10 Q. So this is an email chain that you and

11 Ms. Moskovits were a part of, right?

12 A. Seems like it, yes. I mean, I'm reading

13 it. The documents speak for themselves.

14 Q. Documents don't really speak for

15 themselves.

16 A. The emails speak for themselves, but yes.

17 MR. FREEDMAN: The next one, please.

18 (Whereupon, an email was marked as

19 Lichtenstein Exhibit 8 for identification, as

20 of this date.)

21 Q. And please let me know when you have

22 Exhibit 8 showing.

23 A. Exhibit 8?

24 Q. Yes, sir. Do you have it, sir?

25 A. Yes.

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M. LICHTENSTEIN

1
2

Q. Okay. If you flip to the third page, a
November 1, 2017, email, from your attorney,
Nicholas Kaiser.

5

A. Uh-huh.

6

Q. It reads in part: Toby and Michael do
not intend to enter into a written management
agreement at this time. BSP can insert reasonable
convenience to ensure that the affiliated entities
supply sufficient personnel and transfer all
revenues to the required accounts. The borrower
will enter into an assignment of management
agreement if it engages a third-party unaffiliated
management company.

15

Did I read correctly what your attorney
wrote, sir?

17

A. It seems like you did, yes.

18

Q. And if you flip up to page 2, you look at
the bottom email from Eugene Balshem from Strook &
Strook & Lavan dated November 1, 2017, he writes
back to your attorney, Mr. Kaiser, and states: Any
objection to doing a simple one-page management
agreement that essentially says what you pointed out
to document an arm's length relationship? We have a
simple form we can send.

25

M. LICHTENSTEIN

Did I read that correctly?

A. Yes.

Q. And if you look up one email above that from Mr. Kaiser dated November 1, 2017, at 10:48 to Mr. Balshem, your attorney writes: Thanks for the super quick response. Why don't you draft those provisions into the loan agreement and we could add the affiliated entity as a signatory to the loan agreement solely with respect to those several provisions.

Did I read that correctly?

A. It seems like you did read that correctly.

Q. And then if you look at the bottom of the first page, it's an email from Ms. Wainger dated November 2, 2017, at 10:02 to Mr. Kaiser and others, and she writes: Nicholas, attached is the form management agreement Eugene mentioned in his email below.

And if you look at the last two pages, you'll see that form management agreement.

A. Okay.

Q. Did I read that email correctly, sir?

A. You read that email correctly, yes.

M. LICHTENSTEIN

MR. FREEDMAN: Next one, please.

(Whereupon, an email was marked as
Lichtenstein Exhibit 9 for identification, as
of this date.)

Q. Let me know when you have Exhibit 9, sir.
Do you have it up, sir?

A. Yes.

Q. Okay.

If you look at the first page of
Exhibit 9, it's an email from Ms. Wainger to Mr.
Kaiser dated December 5, 2017, at 2:11 p.m.

Do you see that?

A. Yes.

Q. It says: Subject: BSP/Williamsburg
assignment of management agreement.

Is that correct?

A. Yes.

Q. And Ms. Wainger writes: Nicholas,
attached is a revised draft of the assignment and
subordination of management agreement along with a
redline marked to the last draft circulated. Please
note the attached remains subject to client review
and comment.

Did I read that correctly?

M. LICHTENSTEIN

A. Yes, you read an email that shows drafts going around.

Q. Well, if you give me a second, sir, I will get to the point.

A. Okay. Meanwhile, you've only shown drafts going around, but keep going.

Q. If you give me a second, I'll get to the point, sir.

One of the drafts is an assignment of hotel management agreement and subordination of hotel management fees, along with the one-page hotel management agreement, correct?

A. Yes, along with a note -- that was wrong. Along with a draft hotel management agreement that is not signed and not proof of anything. So I'm not sure what you're trying to say, but keep going.

MR. FREEDMAN: Move to strike as unresponsive.

A. What you said is false.

MR. KELLEY: Mr. Lichtenstein, he gets to make his objections. You don't get to rule on them.

A. I can object, too.

Q. No, that's my job.

Page 193

M. LICHTENSTEIN

MR. FREEDMAN: Exhibit 10, please.

(Whereupon, an email was marked as
Lichtenstein Exhibit 10 for identification,
as of this date.)

Q. Let me know when you have 10, please.

A. Yes.

Q. If you look at the second page, the
second page is that same email from Exhibit 9 from
Ms. Wainger to Mr. Kaiser with the draft --

A. Yeah.

Q. -- with a draft assignment and management
agreement, correct?

A. Well, it's referring to the assignment of
the management agreement, not the management
agreement. But keep going.

Q. Well, when we looked at Exhibit 9, you
saw as part of that draft assignment was that
one-page draft management agreement, correct?

A. As part of what was sent by Benefit
Street, there was a draft, that unsigned management
agreement. But the subject of the emails is about
the assignment of the management agreement, not
about the actual management agreement itself.

Q. I just want to make sure we're clear,

Veritext Legal Solutions
www.veritext.com

212-267-6868

516-608-2400

M. LICHTENSTEIN

1
2

sir. Okay?

3

A. I am being very clear, Mr. Freedman.

4

This email refers -- this email refers

5

to the draft of the assignment and subordination

6

of management agreement.

7

Q. Which --

8

A. It does not refer to the management

9

agreement.

10

Q. Which in Exhibit 10 --

11

A. Yes, Exhibit 10, which you asked me to

12

read now, refers to the --

13

MR. KELLEY: I'm going to --

14

A. Provides the draft of the assignment and

15

subordination management agreement.

16

MR. KELLEY: Mr. Lichtenstein, I'm

17

going to make this question on behalf of

18

Missy. You all have to let each other

19

finish, because she can only type what one

20

person says at a time.

21

THE WITNESS: Missy, did you get what I

22

said? What's the last sentence?

23

(Whereupon, the requested portion of

24

the record was read.)

25

Q. Do you want to go back to Exhibit 9 for a

- Lichtenstein p. 194, l. 25 through p. 206, l. 7 (no video)

Page 194

1 M. LICHTENSTEIN

2 sir. Okay?

3 A. I am being very clear, Mr. Freedman.

4 This email refers -- this email refers

5 to the draft of the assignment and subordination

6 of management agreement.

7 Q. Which --

8 A. It does not refer to the management

9 agreement.

10 Q. Which in Exhibit 10 --

11 A. Yes, Exhibit 10, which you asked me to

12 read now, refers to the --

13 MR. KELLEY: I'm going to --

14 A. Provides the draft of the assignment and

15 subordination management agreement.

16 MR. KELLEY: Mr. Lichtenstein, I'm

17 going to make this question on behalf of

18 Missy. You all have to let each other

19 finish, because she can only type what one

20 person says at a time.

21 THE WITNESS: Missy, did you get what I

22 said? What's the last sentence?

23 (Whereupon, the requested portion of

24 the record was read.)

25 Q. Do you want to go back to Exhibit 9 for a

M. LICHTENSTEIN

1
2 second, sir, just to make certain that you are aware
3 and familiar with the draft hotel management
4 agreement that's attached to the draft assignment
5 document?

6 A. Yes. I'm in Exhibit 9.

7 Q. All I'm asking, sir, is I want to make
8 certain then when we go back to Exhibit 10, the
9 first email on that chain is the same email from
10 Margot Wainger to Nicholas Kaiser dated December 5,
11 2017, which attaches the draft of the assignment and
12 subordination of management agreement that also
13 includes the draft hotel management agreement.

14 That's all I'm trying, to give you
15 context, sir. Do you have it?

16 A. You're referring to Exhibit 9? Exhibit
17 10? What are you referring to now?

18 Q. The second email on Exhibit 10 is the
19 same email that we just looked at in Exhibit 9,
20 correct? Or do you want me to take you through it
21 again?

22 A. The second email in Exhibit 10?

23 Q. Yes.

24 A. In Exhibit 10, yes. It's the same email
25 as which exhibit? I didn't follow.

Page 196

M. LICHTENSTEIN

1
2

Q. 9.

3

A. Yes.

4

Q. Okay. Great. Thank you.

5

And then if you just look up the first

6

page, your attorney, on December 5, 2017 --

7

A. First page of which exhibit?

8

Q. 10, sir.

9

A. Okay.

10

Q. You see an email from Mr. Kaiser to Ms.

11

Wainger dated December 1, 2017, at 4:38 p.m.?

12

A. Yes.

13

Q. And Mr. Kaiser writes in respect to the

14

assignment of management agreement: Thanks.

15

Subject to client's final approval, this document is

16

fine.

17

Do you see that?

18

A. Yes, I see it.

19

Q. Okay.

20

So nowhere in this communication

21

between counsel for the debtor and counsel for

22

Benefit Street Partners does your attorney say,

23

hold it, I have a new November 21, 2017,

24

management agreement between the parties?

25

It doesn't say anything like that,

M. LICHTENSTEIN

1
2

right?

3

A. Can I answer now?

4

Q. I appreciate you answering yes or no.

5

A. Nowhere in this email exchange is there a

6

discussion about the management agreement. The

7

entire discussion in this email exchange is about

8

the assignment and subordination of the management

9

agreement.

10

Q. Right. And --

11

A. And no, it doesn't include anything.

12

It's about the one document. It's about the

13

assignment and subordination management agreement,

14

and note that Nicholas Kaiser response says subject

15

to our approval, this document -- and this document

16

refers to the document that Margot Wainger, which is

17

the --

18

(Technical Interruption.)

19

A. -- previous email from Margot Wainger,

20

which refers only to the revised draft of the

21

assignment and subordination of the management

22

agreement.

23

There is no reference in any of these

24

emails to the actual management agreement.

25

Q. Let's go back --

M. LICHTENSTEIN

1
2 A. Could have very well been replaced with
3 the real management agreement. Which, by the way,
4 both management agreements have very similar terms,
5 so I still don't understand, after six months of you
6 guys wasting so much time on this management
7 agreement, what the difference is between drafts and
8 management agreements and why you're wasting so much
9 time on this matter to begin with.

10 MR. FREEDMAN: Move to strike as
11 unresponsive, and this is going to serve as
12 predicate for our motion to strike your
13 declaration.

14 Q. Let's go back to Exhibit 9, because I
15 thought you understood, but let's try it again. Let
16 me know when you have Exhibit 9 back up, sir.

17 A. Yes, I have it up.

18 Q. Okay.

19 You see the December 5, 2017, 2:11 p.m.
20 email from Ms. Wainger to your attorney, Mr.
21 Kaiser, correct?

22 A. Yes.

23 Q. Okay.

24 And the document attached to that email
25 is the draft assignment of hotel management

M. LICHTENSTEIN

1
2 agreement and subordination of hotel management
3 fees, correct?

4 A. Yes.

5 Q. And attached to that draft assignment of
6 hotel management agreement and subordination of
7 hotel management fees is Exhibit A entitled Hotel
8 Management Agreement, correct?

9 A. I'm looking for the exhibit. Which page?

10 Q. Second to last page, sir.

11 A. Yes.

12 Q. And in response to that email that we
13 just went through together, going back to Exhibit
14 10, your attorney writes in response: Thanks.
15 Subject to client's final approval, this document is
16 fine.

17 Correct?

18 A. He is referring to --

19 Q. No, sir. I just want to know if I read
20 correctly.

21 A. -- the email.

22 Q. Sir, did I read --

23 A. This document refers to the assignment as
24 per the emails. It doesn't refer to the actual
25 management agreement.

Page 200

1 M. LICHTENSTEIN

2

MR. KELLEY: He's just asking you did

3

he read the language correctly.

4

A. You are trying to take an email that is

5

talking about one document and claim that he's

6

talking about different document, which is untrue.

7

MR. KELLEY: Did Mr. Freedman read it

8

correctly, though, into the record?

9

THE WITNESS: Mr. Freedman has read it

10

correctly into the record a few times, and

11

he's trying to read into the record that this

12

email refers to a different document which it

13

doesn't refer to.

14

Q. And you would agree with me that nowhere

15

in Mr. Kaiser's response to Ms. Wainger does he

16

mention the existence of a November 21, 2017,

17

management agreement, correct?

18

A. There is no discussion of the actual

19

management agreement in any of these emails. The

20

only thing being discussed is the assignment of the

21

management agreement.

22

MR. FREEDMAN: Move to strike as

23

unresponsive.

24

Q. I would again ask you, sir, to listen to

25

the question and try to answer my specific question.

M. LICHTENSTEIN

MR. KELLEY: I think he's answered it, but I don't think he's answered it yes/no. But I don't think it's unproductive. If you want to ask it again, ask it one more time.

MR. FREEDMAN: I don't find those comments productive, Charles, in all honesty. I don't appreciate you directing me how to ask questions. And the gratuitous comments, in light of your client's lack of responding to questions, is not productive, either. It's just posturing. That's all it is and you know it.

MR. KELLEY: No. As a matter of fact, it's not. I find that you're wanting to engage in a sparring debate with the witness, and I'm trying to get through the Q&A.

MR. FREEDMAN: It would be good if you can take time with your client and try to get him to respond properly to a question. That's your obligation as counsel for the debtor in respect to a 30(b)(6) deposition, to control your client.

MR. KELLEY: Let's just summarize what just occurred.

1 M. LICHTENSTEIN

2 You asked him if it made any reference
3 to the management agreement.

4 MR. FREEDMAN: I don't need you to
5 summarize.

6 MR. KELLEY: No. You invited this
7 discussion, Gary.

8 MR. FREEDMAN: No. You started,
9 actually, Mr. Kelley. You started.

10 MR. KELLEY: I'm trying to get you to
11 move through.

12 MR. FREEDMAN: And if you can get your
13 client to listen to the question and answer
14 the question, we can move very quickly. But
15 you can't, obviously.

16 MR. KELLEY: Actually, his answer was
17 nowhere in the email does it reference the
18 management agreement and proceeded to
19 continue with a further response.

20 MR. FREEDMAN: And that wasn't my
21 question.

22 MR. KELLEY: If you want to object to
23 the responsiveness of what followed, do what
24 you want to do, but don't tell the client, my
25 client or the witness, how they must answer

1 M. LICHTENSTEIN

2 the question.

3 MR. FREEDMAN: Sure. I have that
4 prerogative. It's a deposition.

5 MR. KELLEY: You're right. You get to
6 ask the question and object to the answer.
7 You don't get to give instruction.

8 MR. FREEDMAN: But you should control
9 your client. That's your obligation.

10 MR. KELLEY: We can speak -- and I'm
11 engaging the questioner when I believe the
12 behavior of the questioner is inappropriate.
13 That's what I'm doing.

14 Q. Let's go back, then, because I just want
15 to make sure I'm clear.

16 On Exhibit 9, Ms. Wainger's email to
17 your client -- your counsel, Mr. Kaiser, is the
18 draft assignment and the draft management
19 agreement, correct?

20 A. Wrong.

21 Q. That's what's there.

22 A. That's wrong. That's not what the email
23 says.

24 Q. I didn't ask you what the email says.
25 That is the problem.

1 M. LICHTENSTEIN

2 THE WITNESS: Missy, you want to read
3 back Mr. Freedman's question, because that's
4 what he just said.

5 Missy, can you read back Mr. Freedman's
6 question.

7 (Whereupon, the requested portion of
8 the record was read.)

9 Q. How is that wrong that "attached to Ms.
10 Wainger's email is a draft assignment and a draft
11 hotel management agreement"?

12 A. Because you didn't say that it was
13 attached. If Missy will read it again, you said --
14 you attempted to say that Ms. Wainger emailed about
15 the assignment and the management agreement, which
16 is wrong.

17 She was emailing about the assignment.
18 And you are constantly trying to conflate the two
19 and claim that Nicholas Kaiser's email was also
20 about the management agreement, which is false.

21 Q. So let me try again, because this is so
22 not very productive.

23 A. Mr. Freedman, I find that whenever I
24 don't respond with what you want to hear, you claim
25 that it's unproductive. So I have news for you:

1 M. LICHTENSTEIN

2 most of my responses are going to be unproductive,
3 because your terminology of what's unproductive is
4 when something doesn't go your way.

5 MR. FREEDMAN: I'm going to ignore that
6 narrative and move to strike it.

7 Q. So here's the question: Attached to Ms.
8 Wainger's email to Mr. Kaiser dated December 5,
9 2017, at 2 p.m. -- and I'm referring to Exhibit 9 --
10 is a draft assignment of hotel management agreement
11 and subordination of hotel management fees, and
12 attached is -- Exhibit A to the assignment is a
13 hotel management agreement, correct?

14 A. Is a draft proposed hotel management
15 agreement, which was never agreed to.

16 Q. And in response to Ms. Wainger's email,
17 your attorney writes, Exhibit 10: Thanks. Subject
18 to client's final approval, this document is fine.

19 Correct?

20 A. Yes, that is the email.

21 Q. Have you ever seen an email from Mr.
22 Kaiser to Strook & Strook & Lavan or Benefit
23 Street's counsel saying that there's a November 21,
24 2017, management agreement?

25 A. I don't know. You're asking me if I

Page 206

M. LICHTENSTEIN

1
2

remember any emails from six years ago. I don't
remember that.

4

Q. So you do recall that the closing took
place on December 13, 2017, sir?

6

A. I don't remember the exact date, but
possibly.

8

(Whereupon, a Document was marked as
Lichtenstein Exhibit 11 for identification,
as of this date.)

10

11 Q. Let me know when you have Exhibit 11 up,
12 sir.

13

A. Okay.

14

Q. The first page is an email from Ms.
Wainger dated December 12, 2017, at 7:11 p.m. to Mr.
Kaiser.

17

Do you see that?

18

A. Okay.

19

Q. The next address on the email is you,
20 NYCDEV.

21

A. Okay.

22

Q. And then you see down on the copy is Toby
23 Moskovits.

24

Do you see her email address?

25

A. Okay.

- Lichtenstein p. 206, l. 4 through p. 216, l. 4 (video p. 206, l. 4-7; p. 206, l. 11 through p. 207, l. 10; p. 208, l. 3 through p. 209, l. 19 and p. 210, l. 17 through p. 212, l. 9 only)

Page 206

1 M. LICHTENSTEIN

2 remember any emails from six years ago. I don't

3 remember that.

4 Q. So you do recall that the closing took

5 place on December 13, 2017, sir?

6 A. I don't remember the exact date, but

7 possibly.

8 (Whereupon, a Document was marked as

9 Lichtenstein Exhibit 11 for identification,

10 as of this date.)

11 Q. Let me know when you have Exhibit 11 up,

12 sir.

13 A. Okay.

14 Q. The first page is an email from Ms.

15 Wainger dated December 12, 2017, at 7:11 p.m. to Mr.

16 Kaiser.

17 Do you see that?

18 A. Okay.

19 Q. The next address on the email is you,

20 NYCDEV.

21 A. Okay.

22 Q. And then you see down on the copy is Toby

23 Moskovits.

24 Do you see her email address?

25 A. Okay.

Page 207

M. LICHTENSTEIN

1
2

Q. And do you see the email from Ms.
Wainger? Going to the second page, it says:
Nicholas, attached are executed PDFs of the mortgage
loan documents, which have been dated for tomorrow.
I will circulate the final closing instruction
letter tomorrow as soon as I receive final executed
settlement statements.

9 Do you see that language?

10 A. Yes.

11 Q. Unfortunately, these pages aren't
12 numbered, but if you go in -- I'd say about 20, 30
13 pages -- you'll see that same assignment of
14 management agreement.

15 Let me know when you're there.

16 A. Which page?

17 Q. 47. My paralegal tells me it's the
18 assignment of hotel management agreement.

19 A. Okay.

20 Q. Let me know when you're there, please.

21 A. It's freezing. Okay. It's freezing, but
22 what's your point? What's your question?

23 Q. Are you there, sir?

24 A. It's freezing again. I guess it's a big
25 file, so the folder Veritext is taking time to

M. LICHTENSTEIN

1
2

upload it.

3

Okay. I'm in the assignment now.

4

Q. Okay.

5

And if you flip to the end of the

6

assignment, I just want to verify your signature

7

on behalf of the management company and Ms.

8

Moskovits' signature on behalf of the borrower and

9

the debtor.

10

A. Okay.

11

Q. Do you recognize those two signatures?

12

A. Okay. I mean, they look like -- they

13

look like our signatures.

14

Q. Then the next page, you'll see a

15

signature of Micah Goodman on behalf of Benefit

16

Street Partners.

17

Do you see that?

18

A. Okay.

19

Q. And the next page, Exhibit A, hotel

20

management agreement, do you see that?

21

A. Okay. I see an unsigned document and a

22

draft sent by BSP. So what?

23

Q. Just to be clear, do you see attached to

24

the assignment of hotel management agreement and

25

subordination of hotel management fees that you and

Page 209

M. LICHTENSTEIN

1
2

Ms. Moskovits signed, attached as Exhibit A, a
one-page document titled Hotel Management Agreement?

4

Do you see that?

5

A. Yes, I see that Margot --

6

Q. Thank you.

7

A. -- sent us a draft set of documents for
execution, and she attached that. It doesn't mean
anything.

10

Q. Did you ever see Mr. Kaiser write back to
Ms. Wainger in response to this email indicating
that the hotel management agreement attached to the
assignment of hotel management agreement and
subordination of hotel management fees was not the
correct document?

16

A. I don't remember now the emails. It
could have been by email. It could have been by
phone. It could have simply been replacing in the
Dropbox documents. I mean, there's five --

20

Q. Simple question, sir.

21

Did you ever see correspondence or
communication from Mr. Kaiser disputing the hotel
management agreement that's attached to the
assignment of hotel management agreement document?

25

MR. KELLEY: Objection to the form.

Page 210

M. LICHTENSTEIN

Go ahead. You can answer. You have to let me get his objection in.

Thank you, Mr. Lichtenstein.

A. As I said numerous times, I don't remember all the emails from Mr. Kaiser about this closing six years ago.

Q. Do you recall you or Ms. Moskovits responding to this December 12, 2017, 7:11 p.m. email that you both were copied on claiming that the management agreement attached to the assignment document was not the appropriate or proper management agreement?

MR. KELLEY: Objection to the form.

You may answer.

Q. Let me break that down. Do you recall you, Mr. Lichtenstein, at NYCDEV, upon receipt of this email, ever asserting in any form or fashion that the hotel management agreement attached to the assignment in this package of documents was not the correct hotel management agreement?

MR. KELLEY: Objection. Form.

A. There were probably hundreds of emails about this closing. You have latched onto one

Page 211

1 M. LICHTENSTEIN

2 single email chain out of hundreds because this has
3 the document that fits what you're trying to claim
4 now. It's meaningless.

5 There's hundreds of emails that --
6 about this closing. There were probably dozens of
7 phone calls, if not more, that were made about the
8 closing, as is the process in every single
9 closing.

10 So your showing me one email which says
11 that attached are revised drafts of loan documents
12 doesn't mean anything. Meaningless.

13 MR. FREEDMAN: Move to strike as
14 unresponsive. I'm going to try it again.

15 Q. You see this email from Ms. Wainger
16 indicating that the closing is going to happen the
17 next day.

18 Do you recall, upon receipt of this
19 email with the assignment document attaching the
20 one-page hotel management agreement, ever
21 communicating to anyone in respect to having an
22 issue with that hotel management agreement?

23 MR. KELLEY: Objection. Form.

24 A. The answer is I don't even remember
25 receipt of this email at all, because I must have

M. LICHTENSTEIN

1
2

received 20 emails from Margot Wainger over that
two- to three-day span.

4

Q. So the answer to my question is no, you
don't recall ever doing that, correct?

6

A. No. You are putting words in my mouth
again. I said I don't even remember receiving this
email. Never mind if I responded or how I
responded.

10

Q. Have you ever -- in producing documents
in this matter, did you come across any
communication or email whereby you responded to the
receipt of this December 12, 2017, email, taking
issue with the hotel management agreement included
here?

16

MR. KELLEY: Objection. Form.

17

Q. Did you ever see that, sir?

18

MR. KELLEY: Same objection.

19

A. The communication could have been by
phone. It could have been by --

21

Q. I didn't ask you, sir. I'm asking did
you see anything in writing.

23

A. The answer is yes, I clearly remember
saying that we're going to use this management
agreement, and no one even cared which management

25

M. LICHTENSTEIN

1
2 agreement form we're going to use. It didn't make
3 an iota of a difference.

4 And that communication could have
5 happened either by email or by phone or by simply
6 replacing stuff in the Dropbox.

7 Q. This is way beyond Dropbox, sir. This is
8 the night before closing. What Dropbox are you
9 referring to now?

10 A. You have apparently not really done real
11 estate closings. The night before a closing,
12 there's still documents that are replaced and
13 changed. And by the way, even after closing,
14 there's sometimes documents that are also exchanged
15 and replaced and changed.

16 Q. Okay. Wonderful.

17 What proof do you have --

18 A. So what you're trying to say: one email
19 out of 500 that came, and you're latching onto it
20 like as if it's the coming of the Messiah.

21 Q. What document or proof do you have that
22 the November 21, 2017, management agreement was ever
23 replaced or substituted for the one that's included
24 in this binder of documents the evening before
25 closing?

1 M. LICHTENSTEIN

2 MR. KELLEY: Objection. Form.

3 A. I didn't say when it was done. I didn't
4 say it was done the evening before the closing or
5 the day of or the day after. Or I didn't say a
6 time. I don't remember the time. As I said again
7 and again, I don't remember the dates of what was
8 done exactly.

9 That's all I have to answer on that,
10 other than saying whatever we have is provided
11 already.

12 Q. There's nothing provided, so that's why
13 I'm asking, sir.

14 How about Ms. Moskovits? Did you see
15 her sending any type of communication disputing
16 the validity of the hotel management agreement
17 included in this document, this Exhibit 11?

18 MR. KELLEY: Objection. Form.

19 A. As I said already, I don't remember the
20 details of how, when, where exactly this was
21 communicated. I do remember that no one really
22 cared one way or the other.

23 This is a straightforward, typical
24 management agreement that has the same terms as
25 the one-pager that you're obsessing about, and no

M. LICHTENSTEIN

one really cared much either way.

Q. So if nobody cared either way, you're okay with the one-page document, then, right?

MR. KELLEY: Objection to form.

A. I prefer to have a real signed management agreement that has real substance to it rather than a one-pager that is not signed that you guys are now trying to claim is the management agreement, as if it's going to help you in any way, shape, or form, make a difference to your case, which management agreement is the management agreement, even.

But I would love to understand why you guys are so busy with this management agreement. I'm just going to probably -- I would love to understand what you are trying to achieve with this management agreement discussion and how it's going to make a difference to your case and how you're going to be off any better with the other management agreement versus this management agreement. I'm not understanding this whole position of you guys.

MR. FREEDMAN: Move to strike as unresponsive.

Q. Please, sir, listen to the question and

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M. LICHTENSTEIN

1
2

try to respond to the question.

3

A. I responded already to the question, and

4

I stand on the response.

5

MR. FREEDMAN: We're uploading the next

6

document. It's rather lengthy, so it's

7

taking a moment.

8

Q. While that's being uploaded, sir, how did

9

the debtor determine that the November 21, 2017,

10

management agreement --

11

MR. FREEDMAN: Strike that.

12

Q. The debtor's seeking to assume the

13

November 21, 2017, management agreement as part of

14

its confirmation, correct?

15

A. Yes.

16

Q. Who on behalf of the debtor was involved

17

in that decision-making process?

18

A. I'm not understanding your question.

19

Q. Who on behalf of the debtor was involved

20

in the decision-making process to assume the

21

November 21, 2017, management agreement?

22

A. Everyone -- that is the management

23

agreement. So we're just continuing the management

24

agreement. I'm not understanding what your question

25

is.

- Lichtenstein p. 223, ll. 9-10 (no video)

Page 223

1 M. LICHTENSTEIN

2 process now.

3 MR. FREEDMAN: Just give me a moment.

4 I just don't have this document, so I have to

5 look at it on the screen.

6 (Whereupon, a package receipt was

7 marked as Lichtenstein Exhibit 12 for

8 identification, as of this date.)

9 Q. You should have Exhibit 12 in front of

10 you, Mr. Lichtenstein.

11 MR. KELLEY: He's off camera.

12 Q. Mr. Lichtenstein, can you come back,

13 please.

14 A. I'm right here. What's up?

15 Q. We're in a deposition. Can you look at

16 Exhibit 12, please.

17 A. Yup.

18 Q. You see the first page, it shows a FedEx

19 confirmation?

20 MR. KELLEY: Mine's not open yet. It's

21 taking a while to open. Sorry.

22 MR. FREEDMAN: Just let me know when

23 it's open, please.

24 A. Okay.

25 Q. I need to wait for Mr. Kelley to have it.

- Lichtenstein p. 224, l. 4 through p. 225, l. 15 (no video)

Page 224

1 M. LICHTENSTEIN

2 MR. KELLEY: Okay. It's just now shown

3 up.

4 Q. So the first page reflects a delivery

5 from Margot Wainger at Strook & Strook & Lavan to

6 your attorney, Mr. Kaiser, at Cohen & Gresser on

7 April 6, 2018.

8 Do you see that, sir?

9 A. Yes.

10 Q. The next, page 3, you'll see a letter

11 from Ms. Wainger dated April 5, 2018, to Mr. Kaiser

12 at Cohen & Gresser.

13 Do you see that?

14 A. Yes.

15 Q. And it's Re: loan file Williamsburg

16 Hotel, property address --

17 (Technical interruption.)

18 Q. Williamsburg loan name -- Williamsburg --

19 MR. KELLEY: You're really cutting in

20 and out.

21 MR. FREEDMAN: Is that better? I'm

22 right next to the microphone.

23 Q. Loan name Williamsburg Hotel, property

24 address 96 Wythe Avenue, Brooklyn, New York.

25 So far so good, Mr. Lichtenstein?

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M. LICHTENSTEIN

A. (No verbal response given.)

Q. Are you still with us, sir?

A. Yes.

Q. And it says: Dear Nicholas, In connection with the above-referenced transaction, enclosed is one copy of the CD closing binder for your files. Please do not hesitate to contact me with any questions. Margot Wainger.

Did I read that correctly?

A. Yes.

Q. And if you would scroll down to page 312, let me know when you're there.

A. It's freezing.

Q. The good news is we're going to be done with this document in a moment.

MR. KELLEY: Sorry, Gary. I was on mute. I had a call come in, but I'm listening.

Q. Let me know when you're there, Mr. Lichtenstein.

A. It's constantly freezing. It's the document, I guess.

Q. If it's easier, and Charles doesn't have an issue, we can just share the screen, do it that

- Lichtenstein p. 225, l. 24 through p. 229, l. 13 (no video)

Page 225

1 M. LICHTENSTEIN

2 A. (No verbal response given.)

3 Q. Are you still with us, sir?

4 A. Yes.

5 Q. And it says: Dear Nicholas, In

6 connection with the above-referenced transaction,

7 enclosed is one copy of the CD closing binder for

8 your files. Please do not hesitate to contact me

9 with any questions. Margot Wainger.

10 Did I read that correctly?

11 A. Yes.

12 Q. And if you would scroll down to page 312,

13 let me know when you're there.

14 A. It's freezing.

15 Q. The good news is we're going to be done

16 with this document in a moment.

17 MR. KELLEY: Sorry, Gary. I was on

18 mute. I had a call come in, but I'm

19 listening.

20 Q. Let me know when you're there, Mr.

21 Lichtenstein.

22 A. It's constantly freezing. It's the

23 document, I guess.

24 Q. If it's easier, and Charles doesn't have

25 an issue, we can just share the screen, do it that

M. LICHTENSTEIN

1 way. But he's -- I guess he's on the phone.

2 A. I'm here. What are you talking about?

3 MR. KELLEY: I don't have any problem
4 if you want to do a shared screen. I think
5 it --

6 A. It's fine. It's unfroze. What page did
7 you say?

8 Q. We're going to do a shared screen.

9 MR. KELLEY: He's saying his --

10 A. It unfroze. What page?

11 Q. It's page 312, sir. Are you there, sir?

12 A. I'm up to page --

13 Q. We can share our screen with you, sir.
14 It would be quicker. Can we do that?

15 A. There's no page numbers there, actually,
16 now. Which document is this? After the loan
17 agreements?

18 Q. It's the assignment document.

19 A. Let me see. Promissory note.

20 Q. There should be numbers on the bottom
21 when you toggle through.

22 A. It disappeared now. Anyway, I'm up to
23 spreader and extension agreement.

24 Q. What page are you on, sir, so I can help

Page 227

M. LICHTENSTEIN

1
2

orient you?

3

A. I'm oriented. I'm just -- there's no
4 pages here.

5

6

7

8

9

10

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17

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21

22

23

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25

MR. KELLEY: If you hover your arrow
over the picture on Veritext, the little
black box will show towards the bottom.
It'll tell you page what of what.

A. Okay. I'm up to 250.

Q. Go to 312, please.

A. Got it.

Q. We can share the screen with you.

A. I'll be there in a second.

Q. Okay. I'm just trying to move this
along.

A. Okay.

Q. Are you there, sir?

A. I'm on page 300, 305. 312, you said?

Q. Yes, sir.

A. Okay.

Q. So in this closing binder that was sent
from Margot Wainger to your attorney, Nicholas
Kaiser, what is the title of the document that we've
identified as page 312?

A. Yeah. The assignment document again.

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M. LICHTENSTEIN

1
2

Q. Can you read that entire title, please,
sir.

3

4

A. Let me go back to the first page.
Assignment of Hotel Management Agreement and
Subordination Hotel Management Fees.

5

6

7

Q. Okay. And read into the record, please,
item C under Recitals. Read that into record.

8

9

A. Borrower and --

10

11

MR. KELLEY: Read a little bit louder,
because your voice is trailing off.

12

13

14

15

A. Borrower and manager have agreed that the
manager will manage the property on terms set forth
on Exhibit A attached hereto and manager is entitled
to certain hotel management fees thereunder.

16

17

Q. Then if you flip a few pages back, tell
me the name of Exhibit A.

18

19

A. Back or front? You mean -- down, you
meant.

20

21

Q. Down. It's page 321.

22

23

A. Yeah. Hotel Management Agreement, the
same as the one we were arguing about before.

24

25

Q. The one-page document, correct?

A. The same one-page document that we were
arguing about before, sent by Margot once again.

Veritext Legal Solutions

212-267-6868

www.veritext.com

516-608-2400

M. LICHTENSTEIN

Q. Thank you, sir.

Final question, or I hope, on this:

Have you ever seen a written agreement or acknowledgment by Benefit Street Partners accepting or ratifying the November 21, 2017, management agreement as the operative hotel management agreement?

A. I said --

MR. KELLEY: You need to move closer to the microphone, please.

A. I said already numerous times I don't remember now.

Q. Has the debtor filed a tax return for 2016? An IRS return.

A. I think so, but I'm not sure it matters to you what we did prior to the loan period.

Q. Sir, I'm just asking, simply, did the debtor file an IRS return for 2016?

A. And I responded that I don't think I have to answer your questions about eight years ago prior to your even being the lender.

MR. KELLEY: Can you just -- Mr. Lichtenstein, this will go much faster. If you know the answer, please respond.